

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
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August 12, 2009

Dear Sheriff,

Upon the conclusion of the 81st Legislature, new laws were enacted that will require seven changes to Minimum Jail Standards. The seven proposed changes to Minimum Jail Standards are enclosed. The formal adoption of the amended minimum jail standards will progress through normal rulemaking procedures as outlined in Title 37 Part 9 Chapter 255 of the Texas Administrative Code and will likely be adopted in November. However, all new statutes will go into effect on September 1, 2009 and will require Texas jails to make necessary changes on that date. To assist in the transition, the following information outlines enacted legislation, changes to minimum jail standards, and required action of Texas counties.

Senate Bill (SB) 1009

SB 1009 is the Sunset legislation that continues the Texas Commission on Jail Standards for 12 more years. In order to increase the effectiveness of the agency, SB 1009 created new mandates for the commission. Chiefly, SB 1009 requires the commission to use certain risk factors to detect jails that are at risk for non-compliance. Of the nine risk factors set forth by SB 1009, two will require action by county jails.

One of the risk factors involves the newly amended Code of Criminal Procedure 16.22(amended by SB 1557) which will require sheriffs to notify a magistrate within 72 hours if an inmate is exhibiting signs of mental illness/mental retardation at any point during incarceration. In turn, the magistrate shall order a mental health evaluation of most referred inmates.

SB 1009 requires the commission to determine compliance with CCP 16.22 as a risk factor. The commission will be amending Jail Standard § 273.5(2), as well as the intake screening form, to ensure the compliance with CCP 16.22 and SB 1009. The new intake screening form will be available on-line or by fax on September 1, 2009.

A second risk factor is the number and nature of inmate deaths. As a result, a change in standards will require sheriffs to notify the commission within 24 hours of an inmate death and, upon conclusion, forward the results of the death investigation to the commission.

The other seven risk factors mandated by SB 1009 include issues such as the history of a jail's compliance; jail population; inmate escapes; number and nature of complaints; problems with a jail's internal grievance procedures; available mental and medical reports such as infectious disease; recent turnover among sheriffs and jail staff; and inmate escapes. At this time, the commission is not anticipating direct action by you with these seven remaining risk factors, but further analysis or practice may necessitate action in the future. Additional risk factors may be added by the commission, if needed.

Judge Donna S. Klaeger, Burnet, Chair
Stanley D. Egger, Abilene, Vice Chair
Irene A. Armendariz, El Paso

Albert L. Black, Austin
Jerry W. Lowry, New Caney
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Other legislatively-mandated provisions of SB 1009 concern the identification of pregnant inmates. County jails will now be required to report the **total** number of prisoners known or determined to be pregnant who were confined in the county jail during the preceding month, based on a count conducted each day of the that month. **Therefore, beginning September 1, 2009, county jails must count all known or determined to be pregnant inmates daily and report the total number on the October population report.** The mandate will require a change in the POP-2 reporting form and an additional change to PR-2 has also been made to identify inmate gender. Copies of the new reporting forms and instructions sheets are included. The intake screening form will also be amended to include this provision of SB 1009.

SB 1009 also mandates that the commission address the care of pregnant inmates. The commission must now ensure that a jails' health services plan addresses the medical and mental health care, including nutritional requirements, and any special housing or work assignments of pregnant inmates. Minimum Jail Standards will soon be amended to reflect these new mandates, but sheriffs should begin to amend their health services plan and submit them to the commission for approval. Sheriffs should consult their local health care provider for an appropriate protocol. An instruction sheet for amending your jails' health services plan is enclosed.

Additionally, SB 1009 requires the commission to prescribe a form for which complaints may be filed against the commission or a county jail under the commission's purview. The commission will be forthcoming with a form that an individual **may** use to file a complaint; however, the commission will continue to accept written complaints in any format. The use of the prescribed complaint form will **not** be required of individuals.

Finally, SB 1009 directs the commission to provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services or the operation of a commissary, to include specific provisions regarding conflicts of interests and avoiding the appearance of impropriety. These guidelines are enclosed.

Other legislation

The following is a brief synopsis of new laws concerning jails and/or inmates that sheriffs should be aware of but will likely not require changes to minimum jail standards.

House Bill (HB) 1233 concerns the court-ordered administration of psychoactive medication to certain criminal defendants.

HB 2093 has provisions that allow a county jailer become trained and certified as a mental health officer

HB 3653 concerns the prohibition of shackling pregnant inmates while in labor unless the sheriff or designee determines that shackling is necessary to protect the inmate, staff, or the public.

HB 3654 concerns the identification and care of pregnant inmates. This bill was rolled into SB 1009.

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HB 3671 relates to the documents that are required for the transfer of a defendant from a county to the Texas Department of Criminal Justice

SB 1557 concerns the early identification of criminal defendants who are or may be persons with mental illness or mental retardation.

The changes required to Minimum Jail Standards were initiated at the August meeting of the commission. The changes will be published in the *Texas Register* with formal adoption scheduled to occur at the November 5th commission meeting. The commission welcomes your input on the revision of jail standards or any other issue. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink that reads "Adan Muñoz, Jr." in a cursive style.

Adan Muñoz
Executive Director
Texas Commission on Jail Standards

Enclosures

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Guidelines for Sheriffs Regarding Food Service and Commissary Vendors

SB 1009 mandates that the Texas Commission on Jail Standards provide guidelines to Texas sheriffs regarding contracts between a sheriff and another entity for the provision of food services or the operation of a commissary, including provisions regarding conflicts of interests and avoiding the appearance of impropriety. Therefore, the Commission sets forth the following guidelines in conducting business with a food service or a commissary vendor.

1. Strive to conduct all business with honesty, fairness, and integrity.
2. To avoid a conflict of interest, a sheriff should not participate in work on a contract knowing that the sheriff or a member of their immediate family has an actual or potential financial interest in the contract, including prospective employment of a contract participant or family member.
3. A sheriff should not solicit or receive personal gifts or gratuities from present or potential vendors and contractors since this can influence or appear to influence procurement decisions.
4. Not be employed by, or agree to work for, a vendor or potential vendor, while still holding the office of sheriff.
5. Grant all competitive suppliers equal consideration insofar as state statute, county, and institutional policy permit
6. Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
7. Know and obey the letter and spirit of laws governing purchasing contracts and remain alert to the legal ramifications of purchasing decisions.
8. Make every reasonable effort to negotiate equitable and mutually agreeable settlements of controversies with a vendor(s). Include independent mediator if necessary.
9. Treat with discretion all information obtained in confidence.
10. To foster government transparency, a sheriff should present a copy of the contract to the County Commissioners' court, not for approval, but for the purpose of making the contract accessible to the public as a public document, even though the commissary fund is the sole discretion of the sheriff of the county.
11. Agree to yearly audit of the commissary fund by the county auditor or outside audit firm hired by the county commissioners' court.
12. Foster fair, ethical and legal trade practices.

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Health Services Plan Change Instructions

On your letterhead, please address the following and submit to us for review as soon as possible. If approved, this will be attached as an addendum to your Health Services Plan currently on file for your facility. Please submit ONLY this addendum.

(5) Provide procedures for medical, mental, nutritional requirements, special housing and appropriate work assignments for known pregnant inmates.

Procedures for each of the five (5) items listed above should be outlined. This will ensure that your jail's Health Services Plan addresses the requirements mandated by Senate Bill 1009.

PROPOSED CHANGE TO STANDARDS
§271.1(3) OBJECTIVE CLASSIFICATION PLAN

THE COMMISSION IS PROPOSING CHANGES TO §271.1(3) Objective Classification Plan TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 REQUIRES THE COMMISSION TO ADOPT REASONABLE RULES AND PROCEDURES ESTABLISHING MINIMUM REQUIREMENTS FOR JAILS TO ENSURE THAT THE JAIL'S HEALTH SERVICES PLAN ADDRESSES MEDICAL AND MENTAL HEALTH CARE, INCLUDING NUTRITIONAL REQUIREMENTS, AND ANY SPECIAL HOUSING OR WORK ASSIGNMENTS NEEDS FOR PERSONS WHO ARE CONFINED IN THE JAIL AND ARE KNOWN OR DETERMINED TO BE PREGNANT. TO ENSURE THAT KNOWN PREGNANT INMATES ARE HOUSED PROPERLY, A MODIFICATION TO THE OBJECTIVE CLASSIFICATION PLAN IS PROPOSED. THE PROPOSED TEXT IS BOLDED.

Custody levels and special housing needs shall be assessed to include minimum, medium and maximum custody levels and the placement and release of inmates to and from special units including protective custody, administrative separation, disciplinary separation and mental and medical health housing **including known pregnant inmates.**

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED CHANGE TO STANDARDS
§273.4(a) HEALTH RECORDS

THE COMMISSION IS PROPOSING CHANGES TO §273.4(a) Health Records TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 REQUIRES THE COMMISSION TO ADOPT REASONABLE RULES AND PROCEDURES ESTABLISHING MINIMUM REQUIREMENTS FOR JAILS TO DETERMINE IF A PRISONER IS PREGNANT. THE PROPOSED TEXT IS BOLDED.

The health services plan shall included procedures for the maintenance of a separate health record on each inmate. The record shall include a health screening procedure administered by health personnel or by a trained booking officer upon the admission of the inmate to the facility and shall cover, but shall not be limited to, the following items:

- (1) health history;
- (2) current illnesses (prescriptions, special diets, and therapy);
- (3) **known pregnancy**
- (4) current medical, mental, and dental care and treatment
- (5) behavioral observation, including state of consciousness and mental status;
- (5) inventory of bodily deformities, ease of movement, markings, conditions of body orifices, and presence of lice and vermin.

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED CHANGE TO STANDARDS
§273.2 Health Services Plan

THE COMMISSION IS PROPOSING CHANGES TO §273.2 Health Services Plan TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 REQUIRES THE COMMISSION TO ADOPT REASONABLE RULES AND PROCEDURES ESTABLISHING MINIMUM REQUIREMENTS FOR JAILS TO ENSURE THAT THE JAIL'S HEALTH SERVICES PLAN ADDRESSES MEDICAL AND MENTAL HEALTH CARE, INCLUDING NUTRITIONAL REQUIREMENTS, AND ANY SPECIAL HOUSING OR WORK ASSIGNMENTS NEEDS FOR PERSONS WHO ARE CONFINED IN THE JAIL AND ARE KNOWN OR DETERMINED TO BE PREGNANT. THE PROPOSED TEXT IS BOLDED.

Each facility shall have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services. The plan shall:

- (1) provide procedures for regularly scheduled sick calls;
- (2) provide procedures for referral for medical, mental, and dental services;
- (3) provide procedures for efficient and prompt care for acute and emergency situations;
- (4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;
- (5) provide procedures for medical, mental, nutritional requirements, special housing and appropriate work assignments for known pregnant inmates;**
- (6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;
- (7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator.
- (8) provide procedures for the control, distribution, and secured storage of over-the-counter medications;
- (9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent standards for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);
- (10) provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place;
- (11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times.

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED CHANGE TO STANDARDS
§281.3 BALANCED DIET

THE COMMISSION IS PROPOSING CHANGES TO §281.3 Balanced Diet TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 REQUIRES THE COMMISSION TO ADOPT REASONABLE RULES AND PROCEDURES ESTABLISHING MINIMUM REQUIREMENTS FOR JAILS TO ENSURE THAT THE JAIL'S HEALTH SERVICES PLAN ADDRESSES MEDICAL AND MENTAL HEALTH CARE, INCLUDING NUTRITIONAL REQUIREMENTS, AND ANY SPECIAL HOUSING OR WORK ASSIGNMENTS NEEDS FOR PERSONS WHO ARE CONFINED IN THE JAIL AND ARE KNOWN OR DETERMINED TO BE PREGNANT. TO ADDRESS THE NUTRITIONAL REQUIREMENT MANDATES OF SB 1009, A MODIFICATION TO THE BALANCED DIET STANDARD IS PROPOSED. THE PROPOSED TEXT IS BOLDED.

Except in emergency situations, meals shall be served in accordance with a written menu approved and reviewed annually for compliance with nationally recognized allowances for basic nutrition **including nutritional requirements of known pregnant inmates**. This approval and review shall be documented and should be performed by a licensed or provisional licensed dietician.

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED ADDITION TO STANDARDS
§269.1(5) DEATHS IN CUSTODY

THE COMMISSION IS PROPOSING AN AMENDMENT TO STANDARDS BY ADDING §269.1(5) Deaths in Custody Report TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 ADDS § 511.0085 OF THE GOVERNMENT CODE THAT REQUIRES THE COMMISSION TO UTILIZE RISK FACTORS TO ANALYZE JAILS FOR RISK OF NON-COMPLIANCE. ONE OF THE RISK FACTORS MANDATED BY SB 1009 IS THE NUMBER AND NATURE OF INMATE DEATHS. THE PROPOSED TEXT IS BOLDED.

(5) Deaths in Custody Report

- A. The Texas Commission on Jail Standards shall be notified of all deaths of inmates while in the custody of sheriff/operator within 24 hours of the death.**

- B. Upon conclusion of the investigation by the sheriff/operator or any other designated law enforcement agency, the sheriff or operator shall forward the report to the Texas Commission on Jail Standards within 10 days.**

- C. The report on the death shall be made available for review by Commission staff upon request.**

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED CHANGE TO STANDARDS
§273.5(2) IDENTIFICATION

THE COMMISSION IS PROPOSING CHANGES TO §273.5(2) Identification TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1557 AMENDS CODE OF CRIMINAL PROCEDURE 16.22 TO REQUIRE A SHERIFF REPORT SUSPECTED MENTALLY ILL INMATES TO A LOCAL MAGISTRATE FOR MENTAL HEALTH EVALUATION. SB 1009 REQUIRES THE COMMISSION REPORT TO THE TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL AND MENTAL IMPAIRMENTS ON A JAIL'S COMPLIANCE WITH THE NEWLY AMENDED ARTICLE 16.22. THE PROPOSED TEXT IS BOLDED.

Procedures for intake screening to identify inmates who are **known to be or observed to be** mentally disabled and/or potentially suicidal and procedures for **compliance with Code of Criminal Procedure Article 16.22** and referrals to available mental health officials.

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.

PROPOSED CHANGE TO STANDARDS
§289.1 WORK ASSIGNMENT AND SUPERVISION

THE COMMISSION IS PROPOSING CHANGES TO §289.1 Assignment and Supervision TO COMPLY WITH THE MANDATE OF SENATE BILL 1009. SB 1009 REQUIRES THE COMMISSION TO ADOPT REASONABLE RULES AND PROCEDURES ESTABLISHING MINIMUM REQUIREMENTS FOR JAILS TO ENSURE THAT THE JAIL'S HEALTH SERVICES PLAN ADDRESSES MEDICAL AND MENTAL HEALTH CARE, INCLUDING NUTRITIONAL REQUIREMENTS, AND ANY SPECIAL HOUSING OR WORK ASSIGNMENTS NEEDS FOR PERSONS WHO ARE CONFINED IN THE JAIL AND ARE KNOWN OR DETERMINED TO BE PREGNANT. TO ADDRESS THE WORK ASSIGNMENT MANDATES OF SB 1009, A MODIFICATION TO ASSIGNMENT AND SUPERVISION STANDARD IS PROPOSED. THE PROPOSED TEXT IS BOLDED.

Inmate work shall be assigned by staff **with consideration for an inmate's condition including known pregnancy**. Inmate activities shall not be supervised by other inmates. Inmates shall not have access to inmate records, nor handle inmate monies or commissary accounts. Maintenance of locking systems and other security detention devices shall not be performed by inmates.

RECOMMEND: PUBLISH THE PROPOSED CHANGE TO STANDARDS IN THE *TEXAS REGISTER* FOR COMMENT.