

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>6</u>
Enforcement Process for Life Safety Concerns in Ohio Jails	NUMBER: 107-BAD-02
RULE/CODE REFERENCE: ORC 5120.10, AR 5120: 1-7 01, 02, 04	SUPERSEDES: 107-BAD-02 dated 06/19/15
RELATED ACA STANDARDS:	EFFECTIVE DATE: September 26, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a process to: (1) monitor and encourage the efforts of local jail officials to comply with the Minimum Standards for Jails in Ohio and (2) more aggressively promote compliance when certain major separation and/or life threatening conditions exist.

III. APPLICABILITY

This policy generally applies to the DRC Office of the Chief Inspector/Bureau of Adult Detention (BAD) staff involved in monitoring and enforcing compliance with the jail standards. More specifically, the policy applies to jurisdictions and their agents.

IV. DEFINITIONS

Annual Inspection - A yearly review of a jurisdiction's compliance with a select group of standards.

Compliance - A term that indicates a jail meets the requirements of a particular standard.

Jail - A local confinement facility and operation recognized by the Bureau of Adult Detention as either a Temporary Holding Facility (THF), 12-Hour Jail (12H), 12-Day Jail (12D), Minimum Security Jail (MSJ), or Full-Service Jail (FS) classification. The classification of jails is established in OAC 5120:1-7-02 (A).

Jail Inspector - A Bureau of Adult Detention employee responsible for the day-to-day Bureau operations as they relate to the jails in the State of Ohio, including conducting jail inspections pursuant to ORC 5120.10.

Life Threatening Condition - A fire safety, public health, electrical, structural, or other identifiable and volatile condition that presents a substantial and immediate likelihood of directly or indirectly causing the death of jail occupants. For purposes of this definition, any staffing pattern that is insufficient to accomplish the safe and orderly evacuation of the physical facility in the event of an emergency is a life threatening condition. Fire safety conditions alone shall be considered life threatening when so defined by a certified fire inspector.

Major Classifications of Prisoners - The major classification of prisoners for the purpose of enforcement are male and female, and adult and juvenile.

Minimum Standards for Jails in Ohio - Enforceable standards established by the Director of the Ohio Department of Rehabilitation and Correction (DRC), in consultation with the Bureau of Adult Detention under the authority of the Ohio Revised Code which applies to county jails, municipal jails, regional jails and workhouse facilities. The purpose of the standards is to facilitate the safe, secure, legal, and effective operation of Ohio's local adult jails in accordance with applicable state and federal laws. Also referred to as "Standards for Jails in Ohio".

Non-Compliance - The term indicating that a jail is not adhering to the requirement(s) of the standard or does not have the necessary documentation to support compliance.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to promote compliance with the Minimum Standards for Jails in Ohio and to take the necessary actions for enforcement when necessary. The Bureau of Adult Detention shall endeavor to systematically promote compliance with these standards. The primary means through which the Bureau of Adult Detention will promote standards compliance through annual inspections on selected standards; periodic monitoring of progress; the provision of technical assistance and training for solving particular problems; and functioning as a resource regarding correctional issues.

If conditions exist which are life-threatening in nature or which do not provide adequate male/female or adult/juvenile separation, an aggressive approach shall be taken to promote prompt remedies to those deficiencies. When the failure of other means necessitates, the Bureau of Adult Detention shall recommend to the Director of the DRC, action to be initiated to enjoin compliance with the Minimum Standards for Jails in Ohio. The final decision as to whether to initiate formal injunctive action lies solely with the Director and need not be in accordance with these procedures.

VI. PROCEDURES

A. Detection/Findings of Non-Compliance through Means Other than Inspections

1. When the jail inspector or other Bureau staff learns of alleged areas of non-compliance with the Minimum Standards for Jails in Ohio during the routine performance of duties other than an annual inspection (i.e., follow-up visits, compliance materials reviews, the receipt of complaints or of reports regarding critical incidents), the inspector shall:
 - a. Maintain a written record of the source of the allegation (e.g., letter, phone call, etc.) and any subsequent conversations/communication relating to the allegation in the appropriate jail file with a copy forwarded to the Bureau administrator or designee.

- b. Discuss the allegation with the jail administrator during the next scheduled visit to the jail documenting any additional information obtained, any suggestions made, and/or any actions taken.
2. When conditions found are considered to be an immediate threat to life safety or considered to be inadequate prisoner separation, the jail inspector shall follow procedures established below.

B. Detection and Verification of Inadequate Separation of Males from Females and/or Adults from Juveniles

1. The following is a list of conditions for enforceable separation of prisoners based on the location within the jail:
 - a. Holding Area
 - i. Male and female – separation by touch;
 - ii. Adult and bound-over juveniles – separation by touch;
 - iii. Adult and non-bound-over juveniles – separation by sight, touch, and normal conversation.
 - b. Housing Area
 - i. Male and female – separation by sight, touch, and normal conversation;
 - ii. Adult and bound-over juveniles – separation by touch;
 - iii. Adult and non-bound-over juveniles – separation by sight, touch and normal conversation (non-bound-over juveniles should not be housed in a jail).
 - c. Other Areas (e.g. classroom, programming areas)
 - i. Male and female – supervised by corrections staff if placed together for the purpose of programming or transportation;
 - ii. Adult and bound-over juveniles – separation by touch;
 - iii. Adult and non-bound-over juveniles – separation by sight, touch and normal conversation (non-bound-over juveniles should not be housed in a jail).
2. Upon detection of inadequate separation during an on-site visit (e.g., annual inspection, formal inspection, compliance monitoring activities), the jail inspector shall immediately notify the jail administration of the separation concern. The jail inspector shall:
 - a. Verbally describe the problem and explain the enforceable nature of the situation; and,
 - b. Discuss alternative solutions to ensure separation.
3. When the jail inspector learns from outside sources of alleged non-compliance with the minimum standards addressing separation of male from female prisoners or juvenile from adult prisoners, the inspector shall take only the steps necessary to verify the allegation. The inspector shall document verification efforts. The jail inspector may:
 - a. Telephone the jail administrator to discuss the allegation; or,
 - b. Make an on-site visit to the jail to verify the alleged concerns; or,

- c. Send written correspondence to the jail administrator outlining the allegation and requesting a response to verify or dispel the concerns.
4. Upon verification or on-site detection of a separation concern, the Jail Inspector shall send written correspondence to the jail administrator with a copy to the DRC Chief Inspector/designee summarizing the separation problem and recommending possible solutions whenever possible. The jail inspector will request that a plan of action for remedying the situation be submitted within thirty (30) days of the date of the correspondence.
5. If a suitable plan for corrective action is returned within the prescribed thirty (30) days, the jail inspector shall review the corrective action and respond in writing following the steps as outlined in DRC policy 107-BAD-01, Inspections of Ohio Jails.
6. If a suitable plan for corrective action is not received within thirty (30) days, the jail inspector shall take one or more of the following steps:
 - a. Contact the jurisdiction to discuss the absence of a plan of action; or,
 - b. Schedule a meeting with local officials, if appropriate, to discuss resolution of the separation concerns; or,
 - c. Notify the DRC Chief Inspector/designee, through written memo, of the status of the situation and recommend a course of action to be taken to ensure resolution of the problem.
7. Upon receipt of the written memo, the DRC Chief Inspector/designee shall do one (1) or more of the following:
 - a. Refer the matter back to the jail inspector for further action or information;
 - b. Contact appropriate local officials to discuss the matter;
 - c. Schedule a meeting with the official(s) responsible for the administration of the jail, the county commissioners/city council and the jail inspector to discuss the failure to submit an acceptable plan of action;
 - d. Confirm the separation problem between male/female prisoners and/or between adult/juvenile prisoners, and inform the DRC's Chief Legal Counsel of this matter for a review and preliminary legal opinion of the merits of the case in conjunction with the Attorney General's Office. Instruct the jail inspector to notify jail officials in writing of the referral of the matter to the DRC Chief Inspector/designee and the DRC's legal section. When the condition will likely require funds to accomplish a remedy, a copy of the notification shall be provided to officials responsible for funding the jail's operation;
 - e. Request the Director of the DRC to proceed with the initiation of formal enforcement action.

C. Detection/Verification of Life Threatening Conditions

1. Whenever violations are suspected that may be regulated by existing public codes, the jail inspector should contact:

- a. The appropriate regulatory/enforcement agency and notify them of the current conditions.
 - b. The jail administrator or designee and notify them of the concern of a life threatening condition.
2. Upon discovery of life threatening conditions as defined in this procedure, the jail inspector shall consult with the DRC Chief Inspector/designee regarding an appropriate course of action as soon as practical, but no later than the next working day, and be prepared to:
 - a. Specify the actual condition felt to be life threatening and explain why;
 - b. Indicate related jail standards and possible public/state codes;
 - c. Note when and how the condition was discovered;
 - d. Propose possible solutions and remedies that are available; and
 - e. Provide additional information as requested if jail staffing is the issue.
3. The jail inspector shall forward the above information in writing to the DRC Chief Inspector/designee if the matter is to be pursued. The DRC Chief Inspector/designee may:
 - a. Refer the matter back to the jail inspector for further action or information;
 - b. Request verification of the hazardous condition by having the jail inspector arrange for an individual from the appropriate regulatory/enforcement agency to confirm suspected public code violations that are associated with the condition;
 - c. Meet with or contact individuals from the appropriate regulatory/enforcement agency and/or local officials to reach a mutually agreeable plan to correct the condition. If the plan includes conditions that are being addressed by another regulatory/enforcement agency, that agency must be consulted during the process;
 - d. Verify the life threatening nature of the condition and inform the DRC's Chief Legal Counsel of this matter within five (5) working days of verification of life threatening conditions. Request legal counsel to review and give a preliminary opinion on the merits of the case in consultation with the Attorney General's Office. Instruct the jail inspector to submit written notification of the hazardous condition to responsible officials within five (5) working days, including a request that a plan for promptly remedying the life threatening conditions be submitted within ten (10) working days. When the condition will likely require funds to accomplish a remedy, a copy of the notification will be provided to officials responsible for funding the jail's operation;
 - e. Decide not to proceed further if, in the judgment of the DRC Chief Inspector, an occurrence of death is highly improbable under the circumstances, such that the risk is not substantial or immediate.
 - f. Request the Director of the DRC to proceed with the initiation of formal enforcement.
4. If the jail inspector requests further information or action from any person, it should be provided as quickly as possible. Any such additional information obtained should be furnished to the DRC Chief Inspector/designee as soon as it is acquired. At any time that the DRC Chief Inspector determines that a verifiable life threatening condition exists, notification to the Director of the DRC shall occur within five (5) working days and formal enforcement action may commence.
5. Upon receipt of an action plan, or notification that the life threatening condition was remedied from jail administrator, the jail inspector shall review the submitted plan and:

- a. Discuss its adequacy with the DRC Chief Inspector/designee;
 - b. Schedule a meeting with local officials if directed by the DRC Chief Inspector/designee.
6. If the requested corrective plan is not received within ten working days, the inspector shall proceed to meet with the DRC Chief Inspector/designee for further guidance.
 7. If the DRC Chief Inspector/designee concur that a suitable plan for corrective action has been provided within the prescribed ten days, the jail inspector shall be instructed to proceed in accordance with section VI.C.5 above in lieu of further enforcement proceedings.

D. Initiation of Formal Enforcement Action

1. Upon identification of an enforcement issue by the jail inspector, the DRC Chief Inspector/designee shall immediately notify the Director and the Chief Legal Counsel of the DRC, that formal enforcement action may be necessary the jurisdiction involved, and the reason(s) for the action. When the conditions are considered to be an immediate threat to life safety, this notice shall occur within five (5) working days of the identification of these conditions by the Jail Inspector.
2. At any time during the initiation and pursuit of formal enforcement proceedings, the DRC Chief Inspector/designee may, upon the recommendation of the jail inspector, approve a plan of remedy to be executed by the jurisdiction in question in lieu of further enforcement proceedings. In such event, the DRC Chief Inspector shall so notify the Director.

E. Documentation shall be maintained as outlined in this policy and significant activities shall be reported in the jail inspector's weekly report.