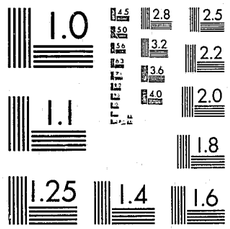

IMPROVING THE OPERATION OF LOCAL TEMPORARY DETENTION FACILITIES

William S. Edmonds

The research described in this draft report was funded by the National Institute of Justice (80-PG-AX-0085). Opinions expressed in this draft report are those of the author and not necessarily those of the National Institute of Justice or the Police Executive Research Forum.

Table of Contents

		Page
Acknowledgements		i
Executive Summary		v
Chapter 1	Background and Introduction of the Study	1
	-Study Methodology	7
	-Organization of Report	10
Chapter 2	An Overview of Temporary Detention	11
	-The Elements of Temporary Detention	12
	-Other Responsibilities of the Detaining Agency	18
	-The Facilities Used in Temporary Detention	22
	-Differences Among Departments in Completing the Tasks in Temporary Detention	25
	-Other Observations of the Temporary Detention Process	28
	-The Problem in Temporary Detention	32
Chapter 3	Problems of Safety and Detainee Personnel Care in Temporary Detention	34
	-Preventing Detainee Suicides	35
	-Making Proper Personal Searches of the Detainee	38
	-Effecting Proper Detainee Confinement and Restraint	41
	-Safety from Assaults and Other Injuries	44
	-Problems Encountered in Transporting Detainees	49
	-Maintaining Physical Security	51
	-Maintaining the Integrity of Evidence	54
	-Resource Requirement for Transporting Prisoners	56
	-Providing Adequate Detainee Personal Care	57
Chapter 4	Policy and Administration in Temporary Detention Facilities	69
	-The Use of Written Policies and Guidelines for Managing the Temporary Detention Facility	70
	-Civil Liabilities in Relation to Temporary Detention	72
	-Command and Control in the Detention Facility	77
	-Staffing the Temporary Detention Facility	79
	-Training for Detention Facility Staff	84
	-The Use of Non-Sworn Personnel in the Detention Facility	87
	-The Need for Improved Recordkeeping in the Temporary Detention Facility	88

Chapter 5 Problems of Resources for Temporary Detention Facility Operation..... 91

-The Need for National and State Standards for Detention Facility Operations..... 93
-Developing Adequate Resources for Temporary Detention..... 98
-The Role of the Arresting Officer in Temporary Detention.....106

Chapter 6 Summary of Findings and Recommendations.....112

Summary of the Findings.....113

Recommendations.....120

An Ideal Model for Temporary Detention.....130

Areas Where Further Inquiry is Needed.....132

Tables

Appendix A: Resources
Appendix B: Model Standards for the Operation of Temporary Detention Facilities
Appendix C: Review of Case Law--Dr. Exequiel Sevilla, LLB

Bibliography

ACKNOWLEDGEMENTS

Certainly no study of the kind described in this report could have been completed without the assistance of law enforcement professionals and agencies throughout the United States. The Forum is indebted to and greatly appreciates the assistance given by the following law enforcement executives:

Cornelius Behan, Chief, Baltimore County (MD) Police Department;

William Bracey, Chief of Patrol, New York (NY) Police Department;

Col. Eugene Camp, Chief (retired), St. Louis, (MO) Metroplitan Police Department;

Dale Carson, Sheriff, Jacksonville-Duval County (FL) Sheriffs Office;

Charles W. Chandler, Chief, Anniston (AL) Police Department;

Harold Davis, Sheriff, El Paso County (CO) Sheriffs Office;

Patrick Fitzsimons, Chief, Seattle (WA) Police Department;

Roger E. Halbert, Chief, Jacksonville (NC) Police Department;

Wayne Huggins, Sheriff, Fairfax County (VA) Sheriffs Department;

Bertell Jefferson, Chief (retired), Metropolitan Police Department, Washington (DC);

Peter G. Pitchess, Sheriff (retired), Los Angeles County (CA) Sheriffs Department;

Roger E. Poston, Chief, Florence (SC) Police Department;

James Rodgers, Chief, Pottstown (PA) Police Department;

Byron Rookstool, Chief, Cheyenne (WY) Police Department;

William Stover, Chief, Arlington (VA) Police Department;

Charles Strobel, Chief, Alexandria (VA) Police Department;

John Taggert, Chief, Colorado Springs (CO) Police Department;

Joe M. Watson, Chief, Hurst (TX) Police Department;

A.L. Watts, Chief, Walla Walla (WA) Police Department;

Hubert Williams, Director, Newark (NJ) Police Department;

Bernard Winkowski, Sheriff, King County (WA) Sheriffs Department;

John Woodward, Sheriff, Onslow County (NC) Sheriffs Department; and

Loyd Smith, Chief, Fairfax City (VA) Police Department.

Participating organizations and agencies:

American Association of Correctional Officers;

American Bar Association;

American Civil Liberities Union, National Prison Project;

American Correctional Association;

American Correctional Health Services Association;

The American Foundation;

American Friends Service Committee;

American Jail Association;

American Institute for Criminal Justice;

American Jail Association;

American Justice Institute;

American Public Health Association;

Benedict Center for Criminal Justice;

Center for Law in the Public Interest;

Community Research Center;

Correctional Services Federation, U.S.A.;

District of Columbia Pretrial Services;

District of Columbia Department of Corrections;

District of Columbia Youth Services Agency;

Guardian Civic League;

Institute for Economic and Policy Studies, Inc.;

Michigan Department of Corrections;

Montgomery County (MD) Corrections Department;

Montgomery County (PA) MH/MR Emergency Services;

National Association for the Advancement of Colored People, Philadelphia Chapter;

National Association of Blacks in Criminal Justice;

National Association of Counties;

National Assocciation of Criminal Justice Planners;

National Center for Altenatives to Incarceration;

National Center for State Courts;

National Center for Youth Law;

National Coalition for Jail Reform;

National Conference of State Legislators;

National Council on Crime and Delinquency;

National Criminal Justice Association;

National District Attorneys Association;

National Institute of Corrections;

National Interreligious Task Force;

National Legal Aid and Defender Association;

National Moratorium on Prison Construction;

National Organization of Black Law Enforcement Executives;

National Sheriffs' Association;

National Urban League;

Offender Aid and Restoration of the United States, Inc.;

Pennsylvania Prison Society;

Philadelphia Pretrial Services;

Police Foundation;

Pretrial Services Resource Center;

Prisoner Visitor and Support Committee;

Southern Coalition on Jails and Prisons;

Supreme Court of Virginia; and

Unitarian Universalist Service Committee.

EXECUTIVE SUMMARY

Every year in the United States, millions of arrests are made by law enforcement agencies. The vast majority of these arrests require that the individual who is arrested be held in police custody until arrangement is made for that individual to either be released or be detained until trial. The formal proceeding at which conditions for release are established is variously referred to as "arraignment," "first appearance," "initial hearing," or some other local variant. The period prior to that first court appearance, during which the arrested individual is detained, is commonly referred to as pre-arraignment detention or, more generally, "temporary detention." So closely is this period of temporary detention associated with law enforcement agencies that the physical facilities used for detention have traditionally been referred to as "police lockups."

The resources available for carrying out the temporary detention function are quite limited in most agencies charged with that responsibility. And, although these resources are potentially renewable, supplementing or replacing existing facilities and resources is very costly. These resources must, therefore, be very judiciously managed, conserved and husbanded. To achieve the levels of conservation required in the face of today's climate of severe fiscal constraint, significant changes must be made in the practices currently followed in

the use and management of temporary detention facilities. The most important of these changes are:

- Law enforcement agencies (police departments) serving large, urban communities should not be charged with the responsibility for temporary detention; instead, in these communities a separately operated corrections agency or sheriff's department should be responsible for this function;
- Less frequent use of the detention facility should be made with misdemeanants and minor felons; for these groups, expanded use should be made of station-house release mechanisms such as citations and summons;
- Juveniles, public inebriates, and mentally ill or retarded persons should not be held, as a rule, in temporary detention facilities; these groups should instead be handled in other, more appropriate community facilities;
- Rural and small communities currently operating their own detention facilities without adequate resources should aggressively pursue the development of regional detention facilities or of cooperative agreements for sharing of resources; and, finally
- Uniform standards for the physical characteristics of structures or areas within structures that are used for temporary detention should be implemented.

These recommendations result from a nationwide study of the management and operation of temporary detention facilities recently completed by the Police Executive Research Forum.

The data for this study were collected through on-site observations at 19 agencies that conduct temporary detention, thorough reviews of the research literature and case law, and from more than 400 interviews with detention facility managers, law enforcement and criminal justice professionals, and representatives of professional

associations and public advocacy groups concerned with corrections and the criminal justice system. Funding for this study was provided under a grant from the Law Enforcement Assistance Administration.

The study had four objectives:

1. to operationally define temporary detention;
2. to identify and describe the operational practices and procedures followed during temporary detention;
3. to identify and describe the key problems or obstacles agencies encounter in carrying out those practices; and
4. to recommend solutions for the correction of these deficiencies.

The Operational Definition of Temporary Detention

Temporary detention is operationally defined as the administrative procedure by which responsible agencies prepare recently arrested persons for initial presentation before the court. This procedure:

- begins with arrest and ordinarily ends with the detainee's presentation before the court;
- includes a number of specific and observable events including booking, fingerprinting, photographing, etc.; and
- usually lasts between 4 and 24 hours.

The specific events that routinely occur in temporary detention include:

- o transportation from the arrest site to the detention facility;
- o reception at the detention facility;
- o identification and booking;
- o confinement and restraint;
- o appearance before the court;
- o release from custody, including
  - release prior to court appearance,
  - transfer to another facility,
  - release as the result of court appearance.

General Findings

Perhaps the most important finding from this study was that there were pervasive dissimilarities among the study agencies in the specific practices they followed in carrying out the detention function. These differences extended even to the kinds of physical facilities used for detention. These differences included the kinds and quality of restraint used with detainees, the length of detention, even the hours of the day or week during which the courts were open to hear initial appearances.

Three specific problem areas were found and examined in this study: problems associated with the safety procedures required to carry out temporary detention; problems in detention facility management and administration; and problems in securing appropriate resources for temporary detention.

The specific safety problems included:

- o the transportation of detainees;
- o conducting proper personal searches of detainees;
- o confinement and restraint of detainees;
- o ensuring detainee and staff safety;
- o preventing detainee suicide;
- o providing the detainee with appropriate medical care, access to hygiene and sanitation; and
- o providing adequate care for special groups of detainees.

Under the area of detention facility management, deficiencies in the following areas were examined:

- o written policies and guidelines;
- o civil liabilities of facility managers;
- o facility arrangements for command and control;
- o selection of facility staff;

- o training of facility staff;
- o employment of civilian personnel; and
- o record keeping activities in the detention facility.

Problems associated with the acquisition of adequate resources for temporary detention included an examination of conditions regarding:

- o inappropriate or non-existent national and state standards for operating temporary detention facilities;
- o the lack of appropriate community resources; and
- o inappropriate actions by law enforcement operations personnel.

To overcome these problems the Forum recommends that the following steps be taken:

- o that physical standards regarding the types of structures or areas within structures that can be used as the location for temporary detention be developed;
- o that agencies undertake comprehensive planning for the overall operation of temporary detention;
- o that in urban areas the responsibility for conducting temporary detention be given to a separate corrections agency rather than to the primary law enforcement agency;
- o that written guidelines and policies for operating the detention facility be developed and implemented by each holding agency;

- o that the use of temporary detention be curtailed in favor of stationhouse release and other options and that detention failities be used only for appropriate populations not including juveniles, public inebriates, the mentally ill and the mentally retarded; and
- o that in communities where it is appropriate, the use of regional detention facilities or cooperative agreements for the sharing of detention resources among adjacent communities be aggressively pursued.

CHAPTER 1

BACKGROUND AND INTRODUCTION OF THE STUDY

Each year in the United States 10 million and more arrests are made for non-traffic criminal offenses. In 1980, the most recent year for which the data are available, there were 10,441,000 arrests. In most instances, the arrested individual remained in law enforcement custody until a first court appearance had been made. This period of custody is known as temporary detention and lasts in cases for as few as 30 minutes and in others for as many as three days. Because of its frequency of occurrence, temporary detention is obviously an important aspect of the criminal justice system. Until recently, however, it was an aspect that went unnoticed. The public's attention is now drawn to this area as the result of media articles and court suits which alleged and often documented the existence of serious deficiencies across the nation in how temporary detention was carried out. The most serious of these deficiencies have resulted in the deaths of facility staff members and of detainees. Some examples of these incidents are presented below.

- In Prince George's County, Maryland, a juvenile being processed into custody was able to seize the handgun of one of the two officers that arrested him and with that gun kill both officers.
- In Signal Hill, California, a university football star was found dead in his cell, an apparent suicide, but under conditions which imply inappropriate actions by police.

- In Milwaukee, Wisconsin, a retarded young man charged with rape was being transported by police away from the arrest site, in a struggle during that transport, the man was killed by police who used a choke hold to subdue him.
- In Limestone County, Texas, three juveniles drowned while in police custody after being thrown from a boat which capsized. The juveniles were being carried by boat to the county's detention facility after being arrested for marijuana possession at a celebration of the Emancipation Proclimation. There were undisputed claims that these persons died because they were handcuffed when the boat capsized.

In addition to avoidable deaths, inappropriately conducted detention can also produce a host of other problems for the justice system and for the detainee. Failure to correctly protect the civil rights of temporary detainees can seriously limit the states ability to successfully prosecute even those persons who confess to crimes. For example, in Des Moines, Iowa, two police officers, while transferring an accused murderer to another community engaged in conversation among themselves which elicited a confession from the detainee to the crime and the location of the body. The Supreme Court of the United States in hearing this case Brewer v. Williams, 430 U.S. 387 (1977) ruled that the detainee's confession acquired in this manner violated the defendant's right to counsel and was therefore not admissable.

Persons who are temporarily detained also face the possible loss of employment, the disruption of their families, psychological trauma, and other adverse effects. In some instances, as in the accidental death in 1981 while in police custody of Ernest Lacy in

Milwaukee, Wisconsin, whole communities became embroiled, even split along racial and other lines as the result of the incident.

Finally, the consequences of an agency's failure to satisfactorily conduct temporary detention can result in the court's direct intervention into that agency's operation of this function. In Washington, D.C., the court established limits on the amount of time that the police could detain an individual at a district stationhouse before bringing them before a magistrate. The suit Lively v. Cullinane, D.C., D.C., 23, CRL, 2259 (1978) was introduced in response to alleged abuses by the District of Columbia police department who routinely held persons in custody for lengthy periods of time before taking them before the magistrate.

The need to resolve problems of the kinds just described and others similar to them is recognized by law enforcement officials and other persons responsible for temporary detention. Their efforts to effect change, however, have been hampered by the lack of valid and reliable information about specific problems in this area. The information that was available came usually from studies that only peripherally examined temporary detention while focussed primarily on some other issue. (Children's Defense Fund, 1976; Hudson, 1977, 1978). Almost nothing is known about the conditions existing in the facilities used for temporary detention, nor even the actual number of agencies conducting it.

A number of agencies had, on their own, developed strategies to address the deficiencies affecting their temporary operations. In many instances, though, because their efforts were not gounded in reliable information, the changes or measures implemented were ineffective and in a few instances they worsened the problem. The lesson from the experiences of these departments in that meaningful information about temporary detention must be made generally available before departments can make appropriate changes in the way they conduct it.

The Police Executive Research Forum, under a grant from the Law Enforcement Assistance Administration, recently completed a study of the temporary detention process and of the problems agencies encounter in carrying it out. The study was national in scope and intended to meet the informational needs of persons having responsibilities or interests in temporary detention; not only the administrators and staff of an agency's detention operation, public officials and concerned citizens. This report describes the findings and conclusions from that study.

As one of the first comprehensive studies of this area, the study had only four goals. They were:

- o to provide the reader with a description of the general procedures and activities completed by the detainee during his/her period of custody;
- o to describe the differences among agencies in how they carry out these activities and in the resources available to them for use in this function;

- to identify and examine the important problems and issues affecting temporary detention; and
- develop recommendations for actions to reduce or eliminate the deficiencies.

The problems examined here were limited to those with potential for resulting in the deaths or injuries of detention facility personnel or detainees, those concerning the care and treatment of detainees, and those regarding effective management practice. A fourth area, that of securing adequate resources for agencies to satisfactorily carry out temporary detention, emerged during the course of the study. In all, seventeen specific probelms or areas of concern were examined in this study. They were:

- personal safety during temporary detention;
- preventing suicides of temporary detainees;
- proper confinement and restraint of temporary detainees;
- making proper personal searches of detainees;
- providing adequate detainee personal care;
- the need for written policies and guidelines in carrying out temporary detention;
- civil libialities of the managers and administrators of temporary detention;
- command and control in temporary detention;
- staffing the temporary detention facility;

- the use of non-sworn civilian personnel in temporary detention procedures;
- training detention facility staff;
- problems encountered in transporting detainees;
- the need for improved recordkeeping;
- the need for national and state standards regarding temporary detention;
- developing adequate resources for temporary detention;
- inappropriate populations for custodial temporary detention; and
- the proper role of the arresting officer in temporary detention.

An important feature of the examination of these problems was the critical analysis of how law, agency policy, and management practice either contributed to or were associated with them. It should be recognized that the recommendations presenting this report are only guides for action and not ordinances which must be followed in carrying out temporary detention. The reasons for this recommendation will become apparent later in the report as it documents the extreme variation among agencies in the resources available to them and conditions under which they must operate. Instead, local administrators should couple their knowledge of the local situation with applicable elements of the recommendations to produce the best possible solution.

Study Methodology

The study described in this report was accomplished through the completion of different but related tasks:

- o the development of an operational definition of temporary detention;
- o personal interviews with law enforcement administrators, administrators and staff of temporary detention facilities;
- o reviews of the case law and published literature, and
- o on-site observations at 19 law enforcement and related agencies of the procedures followed in temporary detention.

Temporary detention was operationally defined for this study as:

- o the administrative process through which newly arrested persons are prepared for admission into the criminal justice system's components of arraignment, trial, and in some instances, corrections;
- o a procedure that primarily, in this country, is the responsibility of law enforcement agencies, namely police and sheriff's departments;
- o a procedure that begins with arrest and ends with the detainees appearance in court. It usually lasts 4-24 hours; and
- o it includes a number of specific and observable events including booking, fingerrinting, photography, etc.

The personal interviews conducted during the study were held with representatives of law enforcement agencies, criminal justice organizations; administrators and staff of detention facilities, and with persons ancillary to the detention process, such as prosecutors,

judges and defense counsel, and respresentatives of advocary groups'. These interviews were directed at documenting current practice, at learning what problems existed, how different jurisdictions has solved them, and perceptions of potential problem areas.

The reviews of case law and scholarly literature were completed to further identify problems and issues. Both reviews were greatly facilitated by the use of computer assisted searches. Federal and state law reporters for the years 1970 through 1981 were a primary source of data for the law review. Much of the published scholarly literature was found to be concerned with relatively long-term confinement in jails, rather than temporary detention. Certain of these literature were, however, applicable to the study and their content is included, where appropriate, in this report. These reviews in one sense collected only historical data. Thus they needed to be augmented with recent information about events in temporary detention. This update was accomplished through the use of a press clipping service, and was intended to sample the range of events in temporary detention occurring during the months of February through May, 1981.

The on-site observations and interviews at the study agencies were particularly important as information sources and much of the documentation regarding temporary detention presented in this report came from these observations. The nineteen agencies visited during the study were from different geographic locations and of varying sizes;

large cities, urbanized counties, small cities, and rural counties. Seven of these agencies provided temporary detention services to adjacent communities. As a result of this multiple servicing the tempoary detention services of more than 40 communities were examined in the study. The sizes of the primary communities serviced by these agencies are shown in Table 1 below.

Table 1 - Size of Primary Community Served by Study Agency

Community Size	n	Percent
1,000,000 and larger	4	22
500,000 - 999,999	4	22
100,000 - 499,999	3	15
50,000 - 99,999	3	15
Less than - 50,000	5	26

More than three-fourths of the agencies had active responsibilities for law enforcement patrol activities. Consequently, these agencies ranged in size from more than 1,000 officers to less than 50. (See Table 3, Appendix A) The number of personnel assigned specifically to carrying out temporary detention ranged from as many as 245 to as few as none. In agencies where no personnel were assigned to this responsibility, the arresting officer had to complete all of the required procedures in temporary detention.

Sixty-eight percent of the agencies operated only a single, central temporary detention facility. The remaining agencies operated a combination of facilities consisting of a central facility and a number of stationhouse lockups. (See Table 3, Appendix A) The number of

lockups operated by any one agency ranged from as few as 3 to as many as 23. More than half of the study agencies were police departments, 20 percent were sheriffs departments, and the remainder were separately organized corrections branches.

Organization of this Report

This report, in order to be most useful to the difference audiences for which it is intended, is divided into the following chapters. Chapter II provides an overview of the temporary detention process including a discussion of how that process differs among agencies. Chapter III identifies and examines the problems and aspects of detention which potentially could result in deaths or injury to facility staff and detainees. Chapter IV looks at the problems encountered in managing the temporary detention facility. Chapter V examines the problems of attacting sufficient resources for temporary detention. Chapter VI summarizes the findings and conclusions of the study and offers recommendations for addressing the problems identified in earlier chapters.

CHAPTER 2

AN OVERVIEW OF TEMPORARY DETENTION

Temporary detention was defined in the previous chapter as an administrative process involving a number of distinct tasks and procedures through which recent arrestees are prepared for entry into the criminal justice system. Those procedures and the practices that departments follow in effecting them are described in this chapter. Before proceeding with that discussion though it may be important to point out for some readers how temporary detention and the facilities used for it differ from jails and prisons.

Prisons are state or federally operated facilities used to confine persons convicted of felonies and sentenced to terms of incarceration of more than one year. Jails are used to confine persons convicted of misdemeanors or minor felonies who have received sentences of one year or less. Very often the jails are also used to hold persons who are not able to meet the conditions set by the court for pretrial release. Temporary detention, on the other hand, is the period of time an individual is in custody after arrest and before their initial court appearance. No formal charges have been placed against the detainee. Even though the jail sometimes serves as the temporary detention facility, temporary detainees are not, technically, a part of the jail's official population.

The Elements of Temporary Detention

In this study we found that agencies' responsibilities for temporary detention included a set of core activities. These basic activities were:

- o transporting the detainee from the scene of the arrest to the site where the temporary detention proceedings will be begin;
- o the procedures followed in admitting the detainee in that location;
- o identification and booking procedures;
- o placement of the detainee into a confinement area or some other form of restraint;
- o initial appearance before the court; and
- o release from custody.

Transportation from the Arrest Site

Transportation to the initial site of detention is usually accomplished by the arresting officer using his or her official vehicle. The detainee is handcuffed and placed in the rear passenger seating area which generally is separated from the forward seating compartment by a secure wire or plexiglass screen. The doors in the rear compartment ordinarily cannot be opened from the inside, thus reducing the detainee's chances of escaping. Further, before placing the detainee into the vehicle, both the detainee and the vehicle are searched for weapons or contraband.

Reception at the Detention Facility

Upon arrival at the detention facility, the detainee and escorting officer(s) are admitted by way of a secure and controlled

at the end of a garage-like parking area reserved for the unloading of detainees. This entrance is kept locked and opened only after the identity of the accompanying officer has been verified. This verification is done usually through the use of either a video monitor or through direct observation by a facility staff member. In some agencies, the transporting officer is required to place personal firearms and any other potentially lethal weapons in a weapons lockers before admittance to the facility is granted.

The detainee is again searched immediately upon entering the facility. In most agencies, certain items of clothing and other personal effects are taken from the detainee during this search and placed into safekeeping. These include valuables, contraband, evidence, and any item that could be used as a weapon or an implement of suicide. A receipt for these things, as well as for any items taken earlier by the arresting officer--firearms, drugs, crime-related evidence--is then given to the detainee. Once this search is completed the detainee is "booked."

Booking Practices

"Booking" is the stage in the temporary detention process where an official record is made of the arrest. It is also the point where biographical information about the detainee becomes a part of the formal record of the criminal justice system. The "book" is a log of

all custodial arrests made annually by a law enforcement agency. Arrests are numbered and entered sequentially beginning on January 1 and ending on December 31 of each year. Information about the detainee entered into that log includes such items as the individual's name, address, sex, age, race, and violation with which they are charged. These entries are based upon information provided by the detainee and also the arresting officer.

Once the detainee's name is entered into the book, he or she is next fingerprinted and photographed. These procedures are further means of identifying the detainee and these records also become part of the detainee's official files. The fingerprints and photographs are cross-checked against those kept on file by the department of persons who have previously been arrested in the local community. This check is made for two reasons: to verify that the detainee is not known to the criminal justice system under another name; and to determine if there are outstanding warrants for the detainee's arrest. Further search is also made of the national and state criminal information systems to find out if warrants or other requests for information about the detainee exists in either of those systems.

If when cross-checking the detainees fingerprints an identical set are found but identified under a name different from that given by the detainee at admission, then all records of this current arrest are filed under the name found during the cross-check. This means that if upon arrest, an individual identified himself as John

Brown, but was later found to have been arrested earlier under the name Tom Smith, it is under the name Smith that the current arrest will be filed. All other names, even perhaps the detainee's given name at birth, should it ever be presented, will be listed as aliases.

Once the booking procedures have been completed or at least those which require the detainees presence, then he or she is placed into a cell or some other mode of restraint to await their court appearance. In some communities this wait is relatively brief, no more than four hours. In others it may be as many as three days before the individual goes to court. In a number of communities the wait to go to court is foreshortened by the availability release mechanisms such as the issuance of summons or the use of a posted bond schedule. These forms or release are known here as pre-arraignment releases.

Pre-Arraignment Release

Under a summons release, the detainee is excused from custody after affirming by signature a legal statement describing the offense and the date and time when they are required to appear before the court. Failure to appear in court at that time usually results in the issuance of a warrant for rearrest under Contempt of Court or Failure to Appear charges. Release on Summons is usually available only to those persons charged with misdemeanors or minor felonies.

In a number of states the legislatures and/or local legislative bodies have developed schedules of appropriate bails for specific offenses. An individual charged with one of these offenses can, upon payment of the scheduled bond, be released from custody. Depending upon the community that bond can be arranged through a bail bondsman, by payment of 10 percent of the bond to the clerk of the court, or by using real property as collateral. As in the summons release, the detainee is freed under the condition that he or she will appear before the court at an appointed time. The detainee's failure to appear results not only in the issuance of a warrant for arrest but also in the forfeiture of all collateral posted as bond.

When none of these options for release is available, the detainee is obliged to remain in custody until first court appearance. At that time, conditions are usually established by which the detainee can be released pending trial.

Transportation to Arraignment

When the detainee cannot be released prior to arraignment, the custodial agency is responsible for insuring that the detainee be available for the court appearance and for physically bringing them to court. In some communities the court and the detention facility are located in the same or adjacent buildings. In these instances the detainee is usually escorted to the court by detention facility staff members. In most instances, court escort officers are not armed. In

several communities this trip is facilitated by the presence of a secure bridge, corridor or tunnel between buildings, or by a secure elevator betwen floors, if in a single building. Access is limited to law enforcement personnel, court personnel, and detainees.

In other communities there is substantial distance between the temporary detention facility and the court. In these places the agency usually transports the detainee to the court by van, bus, or occassionally, auto. Ordinarily, all persons booked since the last court session are transported together. Whenever large numbers of detainees are transported, shackles and handcuffs are used to restrain them. Prior to leaving the facility it is customary to make a personal search of each detainee for contraband, weapons, etc.

No matter how the detainees are transported to the court, upon arrival they are, in most instances, kept under guard and away from the courtroom until their respective cases are called. This is often accomplished by use of a secure anteroom or adjoining hallway.

Once the detainee has been before the court, he or she is taken back to the temporary detention facility for release under the conditions stipulated by the court or for transportation to another facility to await trial if so ordered by the court.

Release from Custody or Transfer to Another Facility

If the court established conditions for the detainee's release that the individual can meet, he or she is released from custody. At release all of the detainee's personal items, with the exception of those to be used as evidence at trial, are returned and the individual is required to sign a receipt acknowledging their return. A record of the person's release, the conditions under which release occurred, and the facility staff members who processed that release is made a part of the individual's permanent file of arrest. In some jurisdictions other information such as time released, the detainees physical condition at release, etc. must be included in the record.

If, on the other hand, the detainee is going to be transferred to another facility, he or she is returned to the detention facility only long enough to complete administrative outprocessing. The procedures are usually no different from those for release, except that upon completing the required paperwork, the individual is transported under guard to the next facility. Transportation is again provided either by bus, van or patrol car.

Other Responsibilities of the Detaining Agency

In addition to completing the physical task in the temporary detention, the agencies or departments were also responsible for

providing detainees with reasonable levels of personal care and protection from physical harm; for safeguarding their civil rights, and for insuring the safety and welfare of facility staff. Facility staff and administrators reported that the most important concerns in these areas were providing detainees with adequate medical care and food service, prevention of detainee suicides, the prevention of assaults by detainees upon staff or other detainees, and providing the detainee with access to required legal counsel or information.

Medical Care

Medical care during temporary detention was usually limited to the treatment of wounds or injuries sustained by the detainee prior to being brought to the facility or to the treatment of medical conditions immediately affecting the health of the detainee. Such care was ordinarily provided through the county or municipal hospital or by a private practitioner. In a few agencies, members were trained as emergency medical technicians (EMT) and were able to provide some basic emergency medical coverage to detainees.

Because they lack adequate medical resources, most facilities did not admit persons requiring emergency medical treatment until they had received competent medical care. The detainee could decline this care, but was required to sign a statement of waiver stating that he or she has knowingly refused to accept the care offered.

Detainees under a doctor's care prior to arrest who were taking prescribed medicines usually had those medicines confiscated at admission to the facility. Once those medicines were verified as prescribed, they were administered to the detainee by the staff in accordance with the directions. When a detainee reports that he or she is taking medicines such as nitroglycerin or digitalis, they are usually allowed to retain those drugs, even without verification.

Food Service

Food service for those being detained varies greatly among the various agencies. In some, the detainee receives hot meals; some others provide only limited meal service consisting of a beverage and a sandwich; some have no food service at all. The availability of food service and the type of food served correlates highly with the nature of the facility. Where temporary detention takes place in a long-term facility such as a jail where food service is provided, detainees often have access to hot meals. In communities where stationhouse lockups are used for detention, there is often no food service available, except that one of the staff personnel will sometimes go to a nearby restaurant (usually a fast food establishment) to get food for the detainees.

Personal Safety

Most agencies had taken steps to deal with the problems of detainee suicides and assaults by detainees upon staff or one another. Most departments had also instituted procedures to reduce the likelihood of detainee suicide. These included such things as frequent observation by facility staff of persons thought to be suicidial and the removal from all detainees of items likely to be used in suicide attempts--belts, neckties, shoestrings, etc.

To prevent or reduce the likelihood of assaults, agencies have implemented procedures such as the use of screening such as to separate violent and agitated individuals from other detainees. Another is separate housing for each detainee. In most agencies, however, separation is not a viable option due to the fact that the facilities were built utilizing multiperson holding spaces or cells.

Preservation of Civil Rights

The rights and privileges which must be afforded to temporary detainees are to a great extent predicted upon rulings from the courts and from key requirements set forth by the legislatures of each of the separate states. It is apparent that under both federal and state statutes arrested persons are still entitled to certain rights and privileges. These varied from state to state but, in general, the detainee had the right to counsel, to make telephone calls, and to

receive visits. The conditions under which law enforcement makes these rights available vary, but the agencies always make available those which were required by law.

The Facilities used in Temporary Detention

The facilities used for temporary detention were found usually to be permanent structures located either in police or sheriff's department headquarters or in outlying department stationhouses. These facilities have spaces for completing the administrative tasks in detention and for confining the movement of detainees. The space for confinement was usually a cell, but in some instances, especially in the stationhouses, there was no means of confining the detainee except to seat them in a chain or bench.

In those communities where the jail served as the location of temporary detention, jail staff were responsible for processing the detainees. In law enforcement lockups or similar facilities either sowrn personnel or civilian jailers served to process detainees.

The facilities visited during the study ranged in age from 5 to 81 years. Surprisingly, the older facilities often appeared to be in better repair than the newer ones.

All of the central facilities are operated around the clock, but not all of them held detainees overnight. Fully 20 percent of them transferred to the county jail those detainees who were not going to

court on the night of their arrest because that facility was usually better prepared to care for the detainees. It was not often necessary to make these nighttime transfers, however, because detainees usually spent only a short time in custody. Table 2 shows the ranges of the average amount of time detainees were held by the study departments.

Table 2 Average Range of Hours Detainees are Held (n=19)

	n	%
up to 48	2	11
up to 36	1	5
up to 24	8	42
4-12	6	32
less than 4	2	11

The study agencies differed significantly in the amount and kinds of services they make available to detainees and in the kinds of training provided the facility staff. Tables 3 and 4 illustrate these differences. Table 3 shows the services available to detainees within the center facility and Table 4 shows the kind of training available to the facility staff.

Table 3 Services Available in the Central Facility (n=19)

		%
Food service	12	63
Medical care	6	32
Access to counsel	15	79
Telephone	15	79
Search	19	100
Routine strip search	3	16
Early release mechanisms (summons, citations, etc.)	6	32

Table 4 Training for Facility Staff (n=19)

	n	%
Law enforcement (formal)	7	37
Corrections (formal)	7	37
OJT only	1	5
None	4	21

It was especially critical to find that only one-third of the study agencies could provide competent, on-site medical care to detainess including treatment and diagnostic care available from personnel trained as Emergency Medical Technicians. It is also interesting to note that only one-third of the study agencies have early release mechanisms. The agencies are evenly divided in terms of training of staff in either law enforcement or corrections.

Table 5 illustrates our findings regarding agency practices in the areas of administration and policy.

Table 5 Selected Policies

	n	%
Weapons introduction and control policies in effect	15	79
Policies in effect regarding staff use of deadly force	11	58
Hold detainees overnight	15	79
holding juveniles	14	74
holding mentally ill	16	84
holding public inebriates	7	36
Written policies		
-in effect	11	58
-under development	5	26
-none	3	16

Two of the important findings here are that only slighty more than half of the study agencies have developed policies regarding the use of deadly force and that a similar proportion have not developed and implemented any written policies at all for operating the facility.

Differences Among Departments in Completing the Tasks in Temporary Detention

Earlier in this chapter, we noted that the Forum had found differences among the study agencies in the resources available for carrying out temporary detention and in the specific practices they followed in completing the different steps in detention. These differences were found in almost every aspect of that process. They began with transportation to the site of detention.

In a majority of departments this travel was made using the arresting officer's official vehicle. In some departments, however, this task is accomplished by especialy designated teams of officers who, using a van or truck, go and get arrestees from the arrest location. This vehicle is usually staffed by two persons, one responsible for driving and the other with responsibility for monitoring the detainees who are carried in the back of the van.

Another difference we noted was in the department's use of handcuffs during detainee transport. In several departments the

decision to use the cuffs was left to the transporting officer's discretion. In many circumstances these officers chose not to use them. Uncuffed detainees have sometimes assaulted officers.

These differences also continue at the detention facility where in some agencies the escorting officers are allowed to bring their weapons into the facility. The availability of these weapons sometimes has been problematic in that detainees were able to secure these weapons and use them in escape attempts or in assaults upon facility staff personnel.

Another area of difference was in the extent to which the department had developed and implemented specific policy for operation of the facility and management of its personnel. The lack of policy can often cause serious problems because without it there may be clear guidance for staff actions in particularly critical situations, fire, escape attempt, etc.

Perhaps the most important of these differences was found in the resources and facilities available to the departments for carrying out temporary detention. Some departments have modern holding facilities equipped with modern technology, others are relatively unchanged from the date of their construction which in some instances was as long ago as the late 1800's. Some departments are able to offer a wide range of mental health, health, and other care services. Others are able to offer none of these services, including food service.

Although here we have identified some of the more outstanding differences found among these agencies, this listing is by no means complete. There are differences among agencies in almost every aspect of temporary detention. The reasons for these differences, we believe, are historical. Temporary detention historically was not a mandated function of law enforcement agencies, but instead over time gradually evolved into one conducted by these agencies. Today and in the past the statutes under which individuals have been detained in legal custody were promulgated by each of the separate states and required something to the effect that "the sheriff or high constable arrest and hold for trial all persons accused of crimes and misdemeanors." In the 18th and 19th centuries, when most of these laws were passed, those arrested were kept in jail until their trial. If they were convicted, only rarely were these persons sentenced to jail; instead there was a great reliance on corporal and capital punishment.

As the country began to grow, important changes occurred in the sytem of administering justice and law. Most importantly, municipal police forces developed and as more and more people were arrested, there was an increase in the number of people awaiting trial. The increased demand for trials helped to increase the length of time between arrest and trial which, in earlier years, had been relatively brief. Further, the use of corporal punishment diminished and, more often than before, persons were sentenced to the county jail or state prison.

As the organized law enforcement agencies of local communities assumed the responsibility for holding temporary detainees, each did so in regard to local conditions. These varied by community and thus the extreme variation among departments in practice regarding temporary detention has resulted largely as an idiosyncratic and evolutionary process.

Other Observations of the Temporary Detention Process

In addition to learning about the practices and facilities agencies used in carrying out temporary detention, the study enabled us to make some general observations about the entire issue of temporary detention and its uses.

In our review of the operation of "lockups" located in law enforcement stationhouses, we observed first of all that these facilities are little used. Of the six agencies which operated lockups, only one held detainees in those locations for as long as 24 hours. Most agencies usually keep detainees in these locations for no more than 4 hours but often for as little as a few minutes. Food service was routinely available in the lockups of only two agencies. Medical service, except for staff-administered first aid, is not available in any of the stationhouse facilities.

Increasingly, those departments which formerly held detainees in stationhouse lockups are surrendering as large a share as possible of their responsibilities for temporary custodial detention to the county sheriff or another local agency established specifically to operate the community's jails. Many facility managers who are from law enforcement want to transfer all responsibilities for this function to the local sheriffs. They suggest that the sheriff is better budgeted and equipped than they to perform this function. The police are supported in this effort by local sheriffs who also believe that they and not the police, are actually mandated by state law to perform this function.

We noted that in some of the smaller communities, the local temporary facility is required to hold adult males, females, and even juveniles. While many authorities recommend and the legislation of several states require that sight and sound separation be maintained among these groups, in many of the smaller facilities, this does not always occur. At best, there is sight separation, but it is almost impossible to comply with the requirements for sound separation.

Both large and small agencies are faced with the problems of providing specialized care to detainees who are public inebriates, mentally ill or retarded, or juveniles. The services required by these groups very soon exhaust the agencies available resources. In a number of sites visited, these resources were simply not available. Many of

these facilities experience the very same or similar problems when they have to detain female arrestees. Local adult temporary detention facilities are built to hold healthy, adult males and other detainee populations place enormous stress on them.

Another area of interest is the public's perception of temporary detention. A popular perception is that temporary detention is, in part, intended to protect society from the acts of certain dangerous individuals by getting them off the streets. The fact is that, under current practices and the law, temporary detainees, no matter how potentially dangerous they may be, are not removed from society through temporary detention. Temporary detention was never intended to function as a protective measure but only as a means for assuring the likelihood that the individual will be available and administratively prepared for the initial appearance in court. The decision to hold individuals until trial is one that can be made only by the courts and not by law enforcement officials. Law enforcment can, however, provide important information to the court when that decision is being made. One step in this direction is the Bail Reform Act of 1968. But even in communities where the Bail Reform Act of which makes possible the consideration of dangerousness in the bail decision. Even in federal communities, this option is not very often invoked because of a number of unresolved issues regarding the principles of due process, e.g., double jeopardy, the right to an adversarial proceeding, and the prediction of dangerousness.

With respect to the prediction of dangerousness of bailed detainees, in recent years it has been suggested that law enforcement develop profiles of those detainees likely to commit offenses while free awaiting trial, and that these profiles be used to identify those persons who should undergo preventive detention. The findings currently available regarding these profiles (Nagel, 1977), however, show that as many as 97 persons out of 100 not likely to commit any crime while on release would also be detained through their use. The routine use of such profiles would result in the detention of so many persons as to overwhelm the available detention facility space in most communities. For these reasons public safety, though an important issue, is not a factor that is inherent in the temporary detention process.

The cost of temporary detention is however an important concern. It has been estimated to cost between $25 and $80 per day to hold an individual in temporary detention. Given the large number of persons detained in this country it is apparent that the total costs are enormous and for some communities the economic burden may be intolerable. This is especially true for small communities which, because they detain fewer people, have a high per capita cost of doing so. This is due to the need for providing a number of services including food service and medical care as well as staff and administration. Large communities are less affected by these costs because they are able to dedicate significantly more personnel and budgetary assets to this process. They are not, however, immune from the adverse impact of these costs, particulary in this era of reduced municipal budgets.

Finally, we noted that the managers of facilities must sometimes deal with efforts to unionize facility personnel, union grievances, and the frequent perception among many lower ranked facility staff that their supervisors are unconcerned. Further complicating these personnel problems is the fact that very often the criticisms or demands placed by special interest or advocacy groups must be addressed.

The Problem in Temporary Detention

So far in this chapter we have described the different aspects and characteristics of temporary detention. What remains is to describe the "problem" in this area. That "problem," we believe, is no single and unique condition or situation specific to all agencies. Instead it is one that is agency-specific and results from the interactions of an agency's operational practice and the local conditions affecting the detention environment.

For example, consider the situation in which a facility does not have the means to provide detainees with food service. Unless detainees are held in that facility for four hours or more, this situation does not present a problem. If detention lasts more than than, then the detainee need to be fed. Another example of these problematic interrelationships concerns the problem of detainee assaults upon one another. While the potential for these attacks exists in every facility, they are likely to occur most often in those where detainees

are allowed to engage in unsupervised contact with one another. Such a situation occurs in the use of group celling arranges or "bull pens" which are so commonly found in facilities used for temporary detention.

We also note that because of the tasks that are accomplished during detention, the close and prolonged contact between the facility staff and the detainees, and the possibly lengthy duration of this involvement, the temporary detention process is more a corections function than one of law enforcement. Too often today, this task is inappropriately delegated to law enforcement agencies.

In the following chapters of this report we will discuss the specific problems affecting detention in three areas: safety in the facility, operational practices, administration, and proper resources for detention. Our discussion of the problems in these different areas begins in the next chapter with those concerning aspects of safety within the detention proceedings.

CHAPTER 3

PROBLEMS OF SAFETY AND DETAINEE PERSONAL CARE IN TEMPORARY DETENTION

It was the perception of respondents interviewed during this study that the most important problems affecting temporary detention were those which could potentially result in the death on serious injury of facility staff members or detainees. This perception was corraborated in our review of court suits and current events where we found that a majority of suits and articles concerned issues of this kind. Safety and freedom from personal injury are very clearly important aspects in the operation of temporary detention and should be addressed. The most serious problems regarding safety and personal care examined in this chapter are:

- o the prevention of detainee suicides;
- o conducting proper personal searches of detainees;
- o effecting proper detainee restraining and confinement;
- o safety from assaults and other personal injuries;
- o insuring the safe transportation of detainees, and
- o providing adequate detainee personal care.

Many of these problems, as might be expected have a number of common aspects and, therefore, in one sense they might all reasonably be discussed together. We have chosen in this chapter to discuss the problems singularly, even when there are obviously common aspects among

them. We have done this to highlight the fact that although certain aspects of the problems are common among them all, the problems themselves are different and unique.

Our discussions of the problems in providing safety to the process of temporary detention begins with the prevention of detainee suicides; a rare, but from the perspective of administrators, the courts, the press and almost everyone else, critical event.

Preventing Detainee Suicides

Although suicides are relatively infrequent occurrences within the general U.S. population, they occur more frequently among persons who are in custody and most frequently among persons being temporarily detained. Hudson (1976) in his analysis of the 223 deaths of persons who died while in all forms of custody in North Carolina from 1972 to 1976 that fully 58 percent of all deaths from non-national cause were suicides and that 64 percent did so during temporary detention. In considering similar data for the years 1977-78 Hudson found that of the 23 non-national deaths occurring in North Carolina's jails 20 were suicides. Hayes (1981) reported similar findings in a national study of jail suicides. Both Hudson and Hayes reported similar characteristics among the victims.

More than three quarters of all suicides in temporary detention occurred within 24 hours of admission to the detention facility.

The victims were usually white males between the ages of 25 and 40 who had been arrested on alcohol related charges. Most had been previously arrested or stopped on these charges before, but this was usually the first time that they had been detained and placed into the facility. More than 85 percent of the suicides did so by hanging and more than half used their belts, anchoring them to fixtures within the confinement area.

Most departments recognized the threat posed by suicide and had undertaken steps to prevent their occurrences. In a number of departments, persons likely to commit suicides were identified using a screening profile which included the characteristics described earlier. Once identified, those detainees are housed in areas designated for use with detainees who must receive more special, frequent observation. The frequency of these observation is usually once every 10-15 minutes. Additionally, in other facilities shoe strings, belts, ties, and other articles of clothing that might be used in suicide are normally taken from the detainee upon admission to the facility and are retained by the staff until the individual is released.

Some measures which should be taken to prevent suicide but that are not being currently done include among others making changes in the architectures of the detention facility. The walls and fixtures in areas used for confining detainees should be built of masonry with

doors of metal with no extrusions such as handles or knobs. Beds, fixtures and other furniture should be built directly into the walls or floor of the confinement area. These fixtures should have no extensions and no places for anchoring belts, neckties, or other implements that might be used in hanging attempt. In those facilities already equipped with barred confinement areas, the detainee should be separated from contact with the bars by shields or barriers made of strong wire mesh, or unbreakable glass. Beds or bunks which are supported by chains and other devices should be removed and bed frames or bunks cantilevered as one piece from the wall should be used.

Another means of preventing suicides (and, incidentally, assaults), is to reduce the detainees' access to metal or plastic eating utensils, shaving materials, and other implements that could be used to inflict harm. Although the law in most states requires that these articles be made available to detainees, access to them can be limited. Silverware can be counted and accounted for and detainees can be made to shave in the presence of facility staff. Strictures of this kind can be made to apply to most kinds of detainee amenities.

We believe that the best means of preventing suicides in the detention facility is to transfer persons identified as suicide risks to a mental health or psychiatric care facility. Institutions of this kind are much better prepared to deal with the suicide-prone individual than are local temporary detention facilities. Unfortunately, this

option is not available in many communities--either because these facilities do not exist or because they are unwilling to accept forensic patients. We strongly recommend that though, wherever it is possible for detention facilities to make use of these kinds of mental health resources, they do so.

Making Proper Personal Searches of the Detainee

Many of the procedures followed in temporary detention require that personal searches be made of the detainee for evidence, weapons, and other contraband. This is particularly true of those procedures which occur early in the temporary detention function--before transportation, and upon arrival at the facility, for example. These searches may be general "body pat down" or frisk searches, "strip" searches, and in some instances searches of body cavities. While there is little concern for searches made while the individual is clothed, there is a great deal of controversy among the public and detention facility administrators about the use of "strip" searches and searches of body cavities. A large part of this concern centers around the character of the agency's policies regarding the use of these types of searches.

In a number of communities, it is common practice to "strip search" all persons admitted to the central holding facility. Agencies usually developed this practice after an agency staff member or other

detainee was killed or injured by a detainee in an assault using a weapon that had not been discovered during a general body "pat-down" search. To avoid further incidents of this kind, these agencies instituted the requirement that all detainees be strip searched. The adherence to these policies has resulted in persons being strip searched after arrest for rather innocuous violations, e.g., eating on a public conveyance or for using profanity in a public place. There are more serious objection to strip searches. Among these are that strip and cavity searches unnecessarily humiliate and degrade the individual without either materially improving safety in the facility or securing important evidence. It is also alleged that these searches are a means by which law enforcement personnel can informally punish or harass persons they believe are guilty of crimes but who very likely will not be punished by the court because of insufficient evidence. Further, it has been charged that, in some instances, male officers have observed the search of female detainees from concealed locations. Finally, there is the perception by many that searches of body cavities are, in fact, medical procedures, but that the agency personnel who make these searches have not been medically trained.

Although each of these allegations has at one time or another been confirmed by the courts, these decisions do not alter the basic fact that strip searches are intended to prevent weapons and contraband from entering the facility. In too many tragic instances, pat-down searches have failed to reveal the concealed weapons of detainees that

were later used to assault facility personnel or other detainees. The need for safety, however, in no way justifies the many alleged abuses of this kind of search.

An important factor in these abuses is the lack of specific agency policy or guidelines regarding conditions under which strip searches or body cavity searches should be made. As noted earlier, all too often strip searches are administered to all detainees, regardless of the circumstances surrounding the arrest. This policy wastes resources and probably does not materially affect the overall safety of the facility. An example of such a situation is one in which a thorough body pat-down search leaves some suspicion that a weapon or other contraband is present, but has not been detected. Before resorting to a strip search, other, less intrusive means should be exhausted first. This would include the use of a portable metal detector on Fluro cope for example.

Although it is probably unreasonable to expect any written policy to adequately address all possible circumstances, a policy which requires a command-level decision to proceed with a strip or body cavity search should be implemented. This gives the processing officer the discretion to seek a strip search, if the need for such a search is perceived. It also takes this form of search out of the realm of the routine and into a category of special treatment. Once the administrator has authorized a strip search, a report of the circumstances should be written, to include:

- o arrestee's name;
- o charge;
- o time of arrival at detention facility;
- o reason for strip search;
- o signature of authorizing command officer;
- o time search initiated;
- o facility staff involved in the search;
- o time search completed;
- o results of search.

Finally, any physical search of body cavities should be made by trained medical or paramedical personnel. At the end of the search, the results from it should be made a part of the official record. These records may be useful at a later date in refuting charges of inappropriate use of the procedure and they are useful as public records of the extent to which these searches are made.

These practices, if followed, can reduce much of the public's anxiety about the use of personal searches without decreasing the levels of security within the facility.

Effecting Proper Detainee Confinement and Restraint

Confinement or the restriction of movement is one of the most recognized aspects of detention and it can occur during several points in the detention process. Once the administrative tasks in detention are completed, the detainee is usually taken before the court. If the court is not in session or for some other reason the detainee cannot be taken just then to the court, he or she is placed into confinement to await their appearance in court. In other instances, when detainees exhibit agitated on violent behavior, they are placed into confinement

the completion of inprocessing. In some facilities detainees are placed into confinement as soon as they enter the structure and are taken out of it to complete the administrative inprocessing. Clearly, there are a variety of patterns in the use of confinement and as will be described later, in the resources used to effect it.

Most agencies use cells or other secure rooms for purposes of confinement. These areas may hold one, two, four or more perons. A number of the agencies we visited during the study used multi-person cells capable of holding ten or more persons. When restraint is required, departments usually use handcuffs or "soft" restraints to bind the detainee's arms and legs. The use of these general forms of confinement and restraint usually cause only minor and/or infrequent problems and are no cause for concern. The problems arise when the confinement resources are either inadequate or inappropriate.

Some examples of the inadequate resources for confinement that were described by respondents during the study included the use of an abandoned vehicle as the confinement facility on an Indian reservation; a flagpole in a small town on the Colorado plains to which detainees are shackled until they can be transferred to the county jail; and even an abandoned gold mine. We were unable to verify the existence of any of these methods of confinement, although they were described by reputable and knowledgeable individuals.

The problem of inappropriate detainee restraint is best exemplified in a case brought against a Delaware township by a former detainee alleging brutality, cruel and unusual punishment, assault, and a number of other related charges, all stemming from events occurring after the plaintiff's arrest on alcohol-related charges. After arrest, this detainee was brought to the township police station which, incidentally, was also the home of the community's chief of police. A chair, bolted to the floor, with attached handcuffs served as the means of restraining prisoners. Although she was restrained in this manner, the detainee was able to free the chair from the floor and use it as a weapon against one of the arresting officers. Her claim is that the police used excessive force in ending her attack and in returning her to a restrained status.

This incident highlights the conditions that are most often associated with inappropriate confinement or restraint of detainees. They are (1) the lack of appropriate physical or structural resources to adequately restrain a violent individual; (2) the lack of restraint resources that provide secure separation between the detainee and the facility staff; and (3) the lack of guidelines or policy regarding the actions that should be taken by detention facility personnel in restraining agitated or violent detainees. When discussing remedies for these conditions with the study respondents, there was firm agreement among them about the things which should be done.

The very first step is to use confinement resources that physically separate detainees from both the facility staff and from each other. The use of "bull-pens" or similar multi-person holding spaces does not allow for this separation, therefore, their use in temporary holding facilities is not recommended.

Clearly, policy and guidelines regarding the allowable procedures for subduing violent or agitated detainees should be developed. It is particularly important that policies regarding the use of deadly force be developed and implemented. It is the Forum's position that deadly force be authorized only in those instances when an armed detainee presents an immediate danger to the lives of the facility staff personnel or other detainees. However, if all other facility procedures are designed and implemented well, there should never be an event when a detainee has access to a firearm or other deadly weapon--thus, in theory, at least, it should never be necessary to use deadly force to restrain a detainee.

Safety from Assaults and Other Injuries

The law and the public expect that persons working in the temporary detention facility or being detained there will enjoy reasonable levels of safety from physical injury or harm. Most of the public believes that the problems of safety are primarily those associated with preventing assaults by detainees upon one another or upon facility

staff members. Some also believe that the problem is to prevent assaults by staff members upon the detainees. Our review of the problems of safety in the facility, however, indicate that physical assaults are only one aspect of a much wider problem of freedom from all injuries, by fire, accident, etc. A number of factors contribute to the problem. In some instances, the architecture or physical arrangement of the facility produces the safety hazard. In other instances, it is the lack of policy or inappropriate adherence to it by facility personnel that causes the problem. Sometimes it is even the provisions of a state's law which produces the dangerous situation.

Examples of the architecture of the facility producing the problem were found in a number of the facilities we visited. They had winding stairwells, obstructed passages, narrow and unlighted corridors, and other physical characteristics detrimental to staff and prisoner safety. In some facilities, these areas either could not be or were not monitored through remote devices. Instead they had to be visually inspected by a facility staff member. This meant, of course, that, if detainees were able to free themselves from supervision or confinement, it was possible for them to hide in these areas with little fear of detection. In some facilities, such areas as the administrative processing stations, and the fingerprinting or photography areas, were arranged in ways that allowed the detainees to be unsupervised and un-monitored, and within reasonable access to exits

from the facility. In addition to increasing the likelihood of escape, the lowered supervision of these detainees increased the opportunity for them to assault facility staff or other detainees.

The problems of safety generated by the lack of appropriate policy or by the inadequate adherence to it are best exemplified by two incidents, one in Maryland, the other in Texas. In the incident occurring in Maryland, a juvenile, while being booked for the commission of a minor felony, was able to secure the sidearm of one of the two arresting officers and kill them both. It is not certain that there was a facility policy requiring officers to remove their sidearms prior to bringing a detainee into the booking facility, but if there was, that policy was violated. It there was no policy in force, the lack of one contributed to the tragedy.

In the Texas incident, three detainees, one a juvenile, died as a result of an accident that occurred while they were being transported in a boat away from the arrest site. These individuals had been arrested for smoking marijuana during a public celebration. The most direct route to the holding facility was across a lake. During the crossing, the boat capsized and the detainees, who may have been handcuffed during the trip, all drowned. Although all the facts surrounding this incident are not available, it seems apparent that the procedures for transporting detainees away from the celebration had not been developed beforehand, and that it was an "ad hoc" procedure to use a boat for this purpose.

The negative effects of state law on detention facility safety are best shown in the following example. At the time of our study, Missouri state law did not require that local detention facilities be staffed 24 hours a day, even in those facilities where detainees were being held overnight. Consequently, many of the smaller facilities were not staffed at night and during 1981, a number of detainees lost their lives in fires which occurred at night because no staff members were available to help them escape. Even more tragic is the fact that one of the fires had been intentionally set by detainees who were trying to summon assistance to help them resolve another problem.

As we noted earlier, the prevention of physical assaults is an important concern for safety in the detention facility. Certainly assaults seem to be a normal and routine, though not accepted, facet of life in the detention facility, but most of those assaults are relatively minor. Only rarely is an assault so serious that it draws the media's attention or forms the basis for court action. Although no one knows for certain how many serious assaults occur in the nation's detention facilities, we have gathered some preliminary information from our review of articles appearing in the nation's daily newspapers. The results of this review are shown in the table below.

Table 6
Deaths and Assaults in Temporary Detention Facilities
(March-June, 1981)

Non suicide/in custody deaths	53

Assaults/staff-detainee	38
Assaults/detainee-detainee	10
Assaults/detainee-staff	14

Most of these assaults occurred under conditions described in earlier sections of this chapter: insufficient numbers of staff to provide adequate detainee supervision; procedures which allow the introduction and retention by detainees and staff of both authorized and unauthorized weapons; and facility practices or procedures which allow detainees to be in uncontrolled contact with one another or with facility staff members. It is possible, however, to reduce or eliminate these conditions from the operations of the detention facility. The first, probably most important, means of doing so is to develop specific policies and procedures regarding detainee management and facility operation. These policies should:

- require that the detention facility be staffed at all times when detainees are being held;
- stipulate the appropriate procedures for evacuating the facility in an emergency situation, and the conditions under which an evacuation of the facility is warranted;
- require that whenever possible detainees be lodged separately; when it is not possible to do so, some form of classification among detainees should be made to reduce the chances of assaults;
- require that detainees be routinely observed by staff members, but no less often than once every 30 minutes;

- o restrict the introduction of any firearms into the detention facility; and
- o require that written descriptions be prepared of all unusual incidents or events.

In addition to the implementation and adherence to the above policies, the administrator of each facility should complete an objective assessment of the extent to which the safety of the facility is being adversely affected by its own architectural or structural characteristics. This assessment should consider the location of the processing stations and their effect on detainee movement patterns; the types of barriers to movement or observation that are inherent in the facility's structure; and any other potential hazards that are of an architectural or structural nature. At the end of this assessment, appropriate changes should be made in the location of the processing stations and impediments to traffic flow or observation should be removed or modified. When it is not possible to physically correct the structural deficiencies found during the assessment, specific practices and procedures should be developed to reduce the likelihood that these inadequacies will lead to injuries of either the staff or the detainees.

Problems Encountered in Transporting Detainees

The last problems of safety considered here are those of transporting detainees. At several stages in the temporary detention

process it will become necessary to transport or transfer the detainee from one location to another under secure conditions. This includes transportation from the arrest site to the detention facility, with any intermediate stops that must be made; transfers within the detention facility or to other components of the agency such as the detective bureau or laboratory; transfer to the court for arraignment and back again; and, on occasion, transfer from one detention facility to another such as a juvenile detention center or a long-term, pre-trial detention facility. Even in the smallest agency these events occur rather frequently, and in larger agencies they occur almost constantly. Their sheer numbers of these transfers and the potential seriousness of improper handling of such transfers cause them to take on great importance in the minds of police executives and detention facility managers. Many aspects in the transportation of these detainees involve issues of safety or other concerns which are discussed below were identified as:

- o maintaining security from escape;
- o maintaining security from injury due to assault or accident;
- o possible contamination of evidence; and
- o resources required for transportation.

These issues are discussed below.

Maintaining Physical Security

Every instance in which a suspect is being transferred or transported from one location to another carries the potential for escape and/or injury to either the detainee or the escorting officer. Unfortunately, the potential for these occurrences is often not fully recognized or acknowledged in agency policy. There are a number of steps that can be taken to minimize the danger of escape or injury that can become part of routine operating procedure. In some cases, the remedies involve particular types of equipment. We recommend the following.

The first step in assuring safety and security is a thorough search of the detainee before the transfer begins. This applies to every instance in which the individual is to be taken outside of a secure facility, and is especially important when it is a one-on-one situation or when several persons are being transferred at one time. The objective of the search is, of course, to deprive the detainee of any tool or weapon that might be used to escape, to harm himself, or to assault an officer, another detainee or a bystander. The details of recommended search procedure were described in an earlier section of this chapter.

When arrestees are transported by vehicle, it is recommended that the vehicle used be one especially equipped for that purpose. It should include standard safety devices such as seat belts or other

restraints, padding, etc. to reduce the likelihood of injury, should an accident occur. It should also include barriers for physical separation of the detainee from the escorting officer(s), to minimize the chances of assault on the officer(s). Ideally, the transporting vehicle should be a van.

Vans designed for prisoner transportation will very likely be constructed with totally separate front and rear compartments, the rear compartment being accessible only from outside the vehicle. A well-designed prisoner transport van will have immovable furnishings in the rear compartment and no place for contraband or evidence to be secreted during transit. There will be no loose or detachable structural elements that could be removed for use as a weapon or tool. The flammability of interior furnishings will be minimal. There should be provision for visual surveillance of the prisoners by an escorting officer during transit. This can be accomplished by means of viewing ports or mirrors, and occasionally by television monitoring. If possible, visual surveillance should be augmented by auditory surveillance, as well. It is best, of course, if more than one officer escorts the persons being transported so that the driver can devote full attention to the safe operation of the vehicle while another officer observes the passengers.

Not every law enforcement agency can afford the cost of such especially designed and dedicated vehicles. Even those with budgets to support such expenditures cannot guarantee that <u>all</u> instances of

prisoner transport will make use of those vehicles. Every law enforcement ageny, at one time or another, will make use of patrol cars for this purpose. For that reason, we recommend that those passenger cars used for prisoner tansport have special equipment and be used in accordance with certain established guidelines. The equipment would include a "cage" or barrier between front and rear seats made of strong wire mesh, plexiglass or metal. Rear doors should be operable only from outside, and rear windows should not be operable at all.

Prisoners should only be transported in the rear seats of these vehicles. The individual should have his or her hands handcuffed behind the back before entering the vehicle. Handcuffs should be used with all detainees irrespective of age, charge or sex, except when the detainee has some limiting physical condition, (e.g., a broken arm etc.). In some instances, officers have been allowed to use their own discretion in the use of handcuffs and this decision has sometimes resulted in officials being assaulted by "non-dangerous" detainees. These assaults, at times, have produced serious injuries, even deaths. Because the safety of the officer is at issue, we do not believe that the discretion not to routinely use handcuffs should be available.

The detainee should remain handcuffed until safely within a secure area at the end of the trip. When being admitted to a detention facility, a body search at the door is recommended, even if one has already been made earlier by the arresting officer. An effort should be made to inform the detainee that the transition from the street to

the detention facility marks the end of one stage of association with the criminal justice system and the beginning of another. This can help to alleviate any hostility that may have been built-up between the suspect and the arresting officer as a result of the arrest. This can only occur, however, if detention facility reception staff maintain a neutral, professional attitude to counteract any pre-existing hostility. This second search, upon arrival at the facility can help emphasize that separation.

Maintaining the Integrity of Evidence

There are two particular aspects of the processing and detention of recently arrested suspects that deserve attention in the context of presenting the best possible case to the prosecutor. One has to do with preserving the chain of evidence, the other with self-incriminating statements by the suspect.

It should be second nature to every law enforcement officer to attend to the need for an "audit trail" for evidence confiscated from suspects. Unfortunately, police officers are human and make mistakes; also there are instances in some agencies in which evidence sometime during the detention process comes into the custody of civilians who may not be aware of the importance of this factor. Every care must be taken to document the chain of evidence. This includes documenting the confiscation of possible evidence at the time of

arrest, on the arrest/incident report completed by the arresting officer. It also includes documenting the transfer of evidence from one party to another within the criminal justice system. Property clerks within detention facilities must be made aware of the potential damage to an otherwise "good collar" that can be brought about through carelessness and lack of attention to detail on their part.

The second element under this topic is not so widely recognized. Agency employees must insure that suspects who are arrested are informed of their right to remain silent and of the legal consequences of giving up that right. An otherwise good case can be lost if agency employees elicit incriminating statements from arrested suspects while being transported unless the Miranda warning has been given first. Most agencies give that warning at least twice--once at the time of arrest and again at in-processing and booking in the detention facility. Having a suspect sign a "Miranda Card" is recommended. Limiting the nature of staff-suspect conversations prior to such an act to only essential matters is also recommended. These essential matters include:

- o identification of the subject;
- o ascertaining any need for medical care; and
- o determining if there are any other immediate needs to be attended to, e.g., dependent care, a vehicle in danger of being ticketed or towed, etc.

Of course, once the Miranda warning has been given, agency employees should feel free to document any potentially useful statements made by the suspect.

Resource Requirement for Transporting Prisoners

It was mentioned in chapter 2 that some agencies require that the arresting officer accompany the suspect from the time of arrest until a first court appearance has been completed. This is obviously a great drain on police resources. This policy takes officers and vehicles off the street for long periods of time, can be very costly in terms of unplanned overtime, and is open to abuse by officers wishing to either avoid or seek out situations where they will be off the street, possibly earning overtime pay. We recommend that prisoner transportation not be done by the arresting officer except in those instances where the delivery of detainees by the arresting officer is more economical than having a special transportation unit perform that task.

One agency we visited had a transportation unit to transport all prisoners except those arrested within a specified few blocks of the central detention facility. Some agencies cover relatively small geographic areas, and would probably not benefit from the use of transportation units. Nevertheless, the officer should not accompany the prisoner beyond the in-processing desk at the pre-arraignment detention

facility, and should return to assigned duties as quickly as possible, leaving the rest of the process to detention facility staff.

Providing Adequate Detainee Personal Care

Although personal safety is perhaps the permanent issue under considering individual well-being in the temporary detention environment, there is also the need to provide detainees with other kinds of personal care. These include hygiene resources, sanitation and other kinds of personal care amenities. The amount and kinds of these resources now available to detainees vary in a markedly random fashion. Some have extensive services, others have only a limited number. In this section of the chapter we consider the kinds of amenities that should be available to temporary detainees and the reasons for making them available.

One reason for concern with the kinds of detainee personal care available is that many of the disciplinary and other problems affecting the detention facility might very possibly be corrected by improving the general levels of cleanliness and other physical conditions within the detainee areas. The cleanliness of the facilities we visited ranged from very clean to very ill-kept. We noticed that the facilities which were clean and well-kept were also the more smoothly functioning. Orderliness and cleanliness however, need to be supplemented with maintaining the facility in good repair. Leaky plumbing

should be repaired or replaced, broken windows should be fixed; and other deficiencies should be corrected. Special care should be given to insuring that the facility is free of insect and rodent infestation. In order to achieve and maintain these high levels of cleanliness and repair, we suggest that routine, daily inspections of the facility be made. Every item in need of repair be noted and no delay longer than that needed to obtain the necessary materials be allowed before the repair is made.

Health Care in the Detention Facility

Health care is a particularly important aspect in the overall quality of the detainee's personal care. It has been argued by a number of facility administrators that because of the brevity of the temporary detention period, no more than rudimentary forms of health care need to be available at the holding facility. We found wide ranges in the kinds of medical services available in detention facilities. In some facilities there are no more than very basic medical services. Persons brought to the facility with serious wounds or injuries are usually not admitted into detention until they have been taken to a medical facility (usually the municipal hospital) to receive care. In some facilities, selected staff members have been trained as Emergency Medical Technicians (EMT's) and are able to provide fairly sophisticated kinds of care to detainees. In detention facilities located within

a county or municipal jail, medical services are usually available from professional medical personnel.

Although there are great differences in the kinds of medical care now available, we believe contrary to the opinion of many administrators, that holding agencies should offer detainees the highest level of medical care possible within the limits of the agency's resources. Several factors account for this recommendation including the medical demographics of detainees, physical conditions of detention which may exacerbate detainee medical problems, and the nature of procedures currently followed within the facilities examined in this study.

Most detainees come from the lower end of the economic range, and are likely to have received little or no health care except in emergency or crisis situations. The lack of regular health care means that many of these persons may have generally poor health. Another characteristic of detainees is that a significant proportion of them are chronic substance abusers. Many are also carriers of highly communicable diseases or conditions such as tuberculosis, tetanus, or body lice. Moreover, the medical well being of detainees may deteriorate significantly as the result of being held in custody under stressful or unhealthy situations. Among these conditions are such things as holding areas which are often cold and drafty, with inadequate ventilation and sometimes even infested with insects or rodents. The use of multi-person holding areas ("bull pens") can also hasten the spread of communicable diseases.

In addition to the deleterious physical conditions under which detainees are sometimes held, a number of administrative practices followed by some agencies tend to also cause or exacerbate a number of problems affecting personal care. Very few of the facilities we visited conduct any type of detainee medical screening other than visual inspection for noticeable wounds or injuries. Relatively few facility personnel have been trained to recognize situations or conditions requiring medical attention. In instances when individuals suffering chronic medical conditions that require continual medical care are detained, their care is most often interrupted. Usually all medicines or drugs found in the detainee's possession are confiscated and retained until it can be established that they are prescribed medications. Persons suffering from diabetes or heart disease may not, as a consequence of this procedure, receive their medicines in time to prevent the onset of complications or even death. Even those suffering less serious afflictions may be negatively affected by the interruption in medication.

Clearly it is important to recognize and correct the deficiencies regarding health care now found in many detention facilities. An important step in this direction is the extensive set of standards regarding the delivery of health care in correctional facilities that were prepared by the American Medical Association. The areas covered in those standards which are appropriate for implementation in temporary holding facilities are presented below. (Numbers noted below are

those assigned by the American Medical Association in correspondence with the applicable standard.

101. Designating responsible health authority
102. Medical autonomy
104. Administrative reports
105. Policies and procedures
112. Decisonmaking: psychiatric inmates
113. Transfer of detainees with acute illness
115. Health trained correctional officers
116. First aid kits
117. Access to diagnostic services
122. Licensure
123. Job descriptions
130. Training of staff regarding mental illness and chemical dependency
134. Levels of care
137. Access to treatment
138. Direct orders
140. Receiving screening
142. Health appraisals
144. Interim health appraisals: mentally ill and retarded
148. Chemically dependent inmates
149. Detoxification
152. Hospital care
154. Emergency services
157. Nutritional requirements
159. Use of restraints
163. Management of pharmaceuticals
168. Informed Consent

The standards concerning the care of the mentally ill or retarded and the chemically dependent detainee are becoming increasingly important because significant numbers of persons with these conditions are being arrested. This is the result, in part, of the movement toward deinstitutionalization of the mentally ill/retarded, and the use of community based facilities to treat them. Often, these

- Inmates placed in holding cells for observation of a medical condition should have their vital signs and other factors observed as directed by the physician.

- Patient monitoring and treatment should be done in accordance with accepted medical practices and orders of the physician.

- Efforts should be made to insure that important laboratory testing is accomplished immediately and in no event later than would be accomplished at any of the local hospitals.

- The medical procedures manual (that should be a part of the formal procedures package) should be reviewed and updated to include a format or plan of action as to the time element in which the patient will be monitored. The plan should be in writing and signed by the doctor

- For every death and/or serious injury at the facility, an independent agency or the grand jury should be asked as soon as it is practicable to conduct a review of agency records and an investigation, where appropriate, regarding the circumstances leading to the death or injury. The findings should be made public.

Essentially, these recommendations require that specific written policy be prepared to cover all aspects of detainee health care, including the selection, training, and supervision of the personnel involved in providing the care, the maintenance of routine records and the preparation of special records detailing any serious medical incident. It should be noted that these recommendations presume the presence of clinically trained medical personnel on the staff of the local holding facility. In many communities, these kinds of personnel

are not found on the agency's staff; smaller communities cannot afford them. In these instances we recommend the use of a number of options for securing the services of trained medical personnel. These options include:

- o The development of cooperative agreements with the local medical association to gain from their members basic coverage provided on a voluntary basis;
- o the identification of an appropriate medical facility to provide emergency medical services to detainees; and
- o the provision to detention facility staff of training as Emergency Medical Technicians. They can treat simple medical problems and at the same time can identify situations or emergencies which require the skills of a physician or other medical professionals.

Caring for Special Detainee Populations

A significant proportion of the people arrested and detained each year are mentally ill or retarded, public inebriates, juveniles, or women. The U.S. General Accounting Office (1980) estimates that between 20 and 60 percent of all those held in custody on any single day are experiencing mental problems. Courtless and Brown (1970) reported that as many as ten percent of those being held in custody have I.Q.'s of 70 or less and the National Coalition for Jail Reform (1981) estimates that as many as 1,000,000 arrests are made annually in connection with public drunkenness. In some communities as many as 50 percent of

all arrests are alcohol related. The Uniform Crime Report (1981) reveals that one-fifth of all arrests are of juveniles and that women constitute slightly more than 15 percent of arrests.

Despite the number of these persons who are arrested annually, the vast majority of local detention facilities are not constructed nor operated to serve anything other than a healthy, non-handicapped, adult male population. The Forum's on-site observations and the responses from many we interviewed clearly illustrate that many of these facilities encounter serious difficulties when attempting to process individuals from other populations.

We found for example, that in one large western community, more that 60 percent of the facility's referrals to outside health care facilities were for persons experiencing mental health problems. This facility is co-located with the municipal jail, and more than 40 percent of the available infirmary bed space is occupied by persons also experiencing similar problems.

The lifestyles of public inebriates and the mentally ill tend to aggravate problems already affecting the facility. Among them are the increased possibility of assault upon other detainees or staff members, the spread of communicable diseases or conditions, e.g., tuberculosis, hepatitis and body lice. Holding the mentally ill and public inebriates, also requires ideally that the facility effectively manage conditions of an episodic nature--withdrawl symptoms, delerium

tremens and extreme manic or depressive states. At most facilities the staff is neither trained nor equipped to handle these problems.

Juveniles and women present the facilities with different but none-the-less important problems. In most states, the law requires that members of these groups be separated by sight and sound from one another and from adult males. Facilities in complying with this requirement often encounter a number of difficulties. In one community this requirement resulted in the necessity to remove 24 adult males from one housing module of the facility and to crowd them into other areas of the facility in order to house five juveniles. In another instance, because there was no area of the facility in which the required separation could be maintained between juveniles and adults, juveniles were instead detained in the reception area of the facility where they were in effect "on public display" to those entering the building.

The requirement to separately process female detainees can have similar consequences. In one facility whenever a female is processed, it is necessary to clear the administrative area of all adult males until the women's admission process is completed. This means placing the men into secure confinement, then later returning them to the administrative area to complete their processing. This procedure has, at times, required up to a two hour interruption in the processing of male detainees.

The problem of handling female and juvenile detainees is further exacerbated by the fact that, in many communities, there are no alternate resources for dealing with those accused of crimes, i.e., youth home, juvenile center, etc. In these instances the local holding facility is the only means of detaining these individuals, even when it contravenes the law to do so.

We believe on the basis of what we found in the field, that local holding agencies simply cannot process individuals from these special groups simultaneously and in the same location as adult, non-handicapped males. There simply are insufficient resources available for this purpuse. Staff are not adequately trained for this responsibility and most facilities are not equipped with the special features, appliances, or devices needed in processing these persons. Further, in many departments, the numbers of persons in these "special populations" is so low that agencies cannot warrant the financial and other investments needed to provide the required services.

We suggest, therefore, that local departments or agencies not be held responsible for holding detainees from these groups, except in those instances where appropriate facilities and resources are not otherwise available. This is especially true for holding juveniles, the mentally ill or retarded and public inebriates. Where appropriate resources are not available in the facility for them, alternative community resources should be utilized. If alternatives are not

available, the local holding agency should actively promote the development of these resources.

In this chapter we have presented information about some of the more important problems and concerns associated with the safety and detainee personal care in the operation of temporary detention facilities. Certainly not all facilities experience every problem we discussed. Some facilities may experience only one or two of these difficulties and others none at all. There is, however, always the possibility that one or more of these problems might emerge at some point in a facility's operation. We have addressed them here in an effort to create an awareness among facility managers of the kinds of problems they can logically expect to encounter. The levels of safety and personnel care afforded to those working in the temporary detention facility can and should be improved. One of the more critical aspects of improving or correcting these deficiencies is to develop and implement policies, procedures, and guidelines that insure the desirable conditions are being achieved. In the following chapter, the more important of these administrative requirements are discussed.

CHAPTER 4

POLICY AND ADMINISTRATION IN TEMPORARY DETENTION FACILITIES

In the previous chapter we identified the fact many of the problems regarding safety and personal care in tempoary detention were the result of deficiencies in the area of policy and administrative procedure. We found seven areas of deficiency regarding the policy and administration of temporary detention facilities to be most in need of attention. These are:

- o written policies and guidelines;
- o civil liabilities of facility managers;
- o facility arrangements for command and control;
- o selection of facility staff;
- o training of facility staff;
- o employment of non-uniformed civilian personnel; and
- o recordkeeping activities in the detention facility.

Our examination of the issues begins with a consideration of the shortcomings in the policies and guidelines agencies use to direct the temporary detention process.

The Use of Written Policies and Guidelines for Managing the Temporary Detention Facility

Before any organization or agency can operate smoothly and efficiently, there must be clearly understood rules for its operation. This is certainly true for the temporary detention facility. Written policies and directives provide the rules for operating a facility and not only specify the procedures and practices that an agency will follow in carrying out temporary detention, they also establish the criteria by which an agency can assess its own performance.

Policy is a general-level statement of the overall mission of the facility, its goals and objectives, the plan for achieving those goals and objectives, and the procedures that are acceptable for carrying out that plan. Policy speaks in rather general terms, in contrast to a directive, which is much more specific and detailed.

Directives are written to prescribe specific actions at the operational level. They specify, by position or duty assignment, the actions personnel are required to take (or are prohibited from taking) in carrying out a specific activity; the kinds of equipment, if any, required for completion of the task; and the conditions under which special practices should be followed; including a description of those practices. In those instances where it is appropriate, the guidelines should identify any time constraints regarding completion of specific activities; as for example the time allowed by law or local court

decision between booking and presentation before the court. These guidelines should also identify ancillary resources, personnel or materials required for each task.

There was significant variation among the study departments in the extent to which they had developed and implemented written directives. Four of them had developed directives only in regard to critical or emergency situations. Seven had no written rules at all, although four of those seven were in the process of developing them In those departments without written directives, their lack was often explained away by statements such as "everyone knows what the chief wants". The other six agencies had developed written materials, but in only two did the directives appear complete enough to be of real value in managing the detention facility.

Because policies are essentially "intentions for action" and directives, "the appropriate action," it is important that the two be logically consistent. The best means of insuring this link is by critically examining each activity carried out in the detention facility. That assessment should reveal areas where linkages must occur between policy and directives and also the required character of those linkages.

It should be noted that the development and implementation of even the best directives can have no effect on a facility's operation unless they are carried out in the intended manner. In fact, when

agencies develop, then fail to effectively implement their directives for operating of the temporary detention facilities, successful court cases can and have been made citing the lack of implementation as negligence. This means that facility managers and supervisors must take every possible action to insure that the self-imposed rules are being followed to the letter.

Civil Liabilities in Relation to Temporary Detention

Within the requirement that the sheriff or other public official arrest and detain individuals suspected of committing crimes is the implicit understanding that the detainees be held in conditions which preserve their health, safety, and welfare. When the conditions of confinement do not provide these safeguards, the detainee is allowed by law to seek redress in the appropriate court. Suits of this kind can place the facility, its individual operators and managers, and the community wherein it is located at liability.

In recent years, a large number of suits have been filed alleging inappropriate conditions within the temporary detention process. Most have either been thrown out of court or have not won the court's support. (Five of the agencies studied had experienced such suits.) Some few suits, however, have found favor in the court and have resulted in the assessment of fines and damages against the individual operators and administrators of those facilities and against the local

government in the communities where these facilities are located. Changes in the practices and procedures followed in the facilities, as well as other remedies deemed appropriate by the court have also been ordered.

Even in those instances where the court rejected a particular suit or did not find in favor of the plantiff, the subject agencies found themselves expending significant resources to develop credible defenses to refute these allegations. Another possible effect of these suits is that the stresses and other pressures they bring to bear upon the involved agency's employees and upon public officials can have severe negative consequences for the professional careers of those individuals. These include things such as unplanned retirements or resignations in the wake of unresolved boards of inquiry, etc.

The essential question the courts raise in such suits is whether or not the conditions of detention amount to punishment or are worse than would have resulted from incarceration as a result of sentencing. The standards for this decision flow from the Supreme Court's findings in Wolfish v. Bell (441 U.S. 520, 1979). This suit was initially brought by pre-trial and not temporary detainees being held in the Metropolitan Correctional Center, a federal facility located in Manhattan, New York. The plaintiffs alleged that many of the practices of that center deprived them of their constitutionally protected rights.

The court found that so long as there is no expressed intent to punish a detainee, then any condition or practice related to ensuring the detainee's appearance at trial or the effective management of the facility is allowable under the law. When practices or conditions are instituted as punishments or are arbitrary and unrelated to securing the detainee's appearance at trial, they are not allowed and agencies which exercise or permit them are liable. Although Wolfish v. Bell, was related to the conditions of "pre-trial," not "pre-arraignment," detention, its findings have become the standard by which the conditions of any confinement, including temporary detention, are judged.

Relief from adverse conditions in temporary detention is available to the detainees under several statutes, the most important of which are the Federal Torts Claims Act of 1946; Title 42, Section 1983 of the U.S. Code; and various articles and amendments to the U.S. Constitution.

The Federal Torts Claims Act of 1946 made the federal, state and local governments liable for the actions of their employees. Prior to its passage, these entities were relatively immune to such suits. In addition to the 1946 Act, many states passed similar legislation which expanded even more the areas of possible liability of local governments--and by extension, their separate agencies, including those responsible for carrying out temporary detention.

Title 42, Section 1983 of the United States Code in part states that:

> Every person who, under any statute, ordinance, regulation, custom, or usage of any state subjects or causes to be subjected, any citizen of the United States, or other persons within the jurisdiction there of, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Under this statute a superior may be liable for the illegal or inappropriate actions of subordinates, if those actions can be shown to result from provable negligence on the superior's part. Under this provision, senior law enforcement managers have been sued for such things as negligent hiring, negligent training, negligent retention of unqualified personnel and failure to properly supervise and direct the actions of agency personnel.

In settling "1983" suits, the courts have often awarded the plaintiff punitive damages that were sometimes two or three times larger than those assessed as compensatory damages. These punitive damages were set by the courts as a means of discouraging the continuance of a proven, inappropriate procedure or practice.

The constitutional protections guaranteed in the Fifth and Eighth Amendments against violation of due process, cruel and unusual punishment, and similar prohibitions, have been successfully used as the grounds for suits regarding the events in temporary detention.

Despite the abundance of conditions under which suits alleging liability for events in detention can be brought,these conditions are not without limitations. In its review of Fact Concerts, Inc. v. The City of Newport, Rhode Island (49LW, 4860, 1981) the Supreme Court of the United States disallowed the assessment of punitive damages against communities under Title 42, Section 1983, U.S.C. on the grounds that such awards unduly punish the citizens of the community and not those individuals truly responsible for the prohibited act. Under this ruling the assessment of punitive damages against the culpable individual(s) is still allowed, as is the assessment of compensatory damages from the community.

Another limitation in liability is that public officers acting in the performance of their duties have been granted, by the courts, limited immunity against torts. This relief is given in the belief that the threat of that action would hamper and intimidate these officials in the performance of their duties. The courts differentiate, however, between "discretionary" acts (quasi-judicial) and "ministerial" acts in determining when to grant this immunity. Discretionary acts require deliberation, decision, and judgment, while ministerial acts amount to obeying orders. Immunity exists for discretionary acts so long as they are done in good faith. It does not exist for ministerial acts. As a result, an officer who follows an order which he or she knows to be illegal cannot avoid culpability by offering the defense that he or she was "simply following orders."

Finally, as a further defense against liability, the courts have upheld claims by public officials that they did not have knowledge of alleged acts of the accused. This defense has not been successful, however, when offered in regard to alleged improper arrest and detention of the detainee and to abuse of the individual while he or she was detained.

We note that the defenses that agencies now invoke in an attempt to avoid culpability for conditions within the detention facility can be strengthened through specific policies and guidelines regarding each phase of the temporary detention process. The mere existence of these guidelines is not sufficient to provide the desired level of protection from culpability, however. It must also be shown that the guidelines are rigorously enforced, for, if not, failure to adhere to them may itself be used as grounds for court action.

Command and Control in the Detention Facility

In addition to insuring that the agency's own regulations are followed, the facility managers and supervisors are responsible for overseeing prescribed activities and for providing facility personnel with day-to-day guidance in performing their responsibilities. This "command and control" function is a critical factor in the successful operation of any detention facility.

A variety of arrangements for exercising this responsibility was found among the study sites. In some of the smaller facilities, almost all authority is vested in the single jailor usually on duty, with minimal guidance from senior law enforcement staff. As the facilities become larger and the number of personnel increases, there is increasing differentiation among roles and responsibilities. Even among these larger facilities were differences in the degree to which authority and responsibility are distributed. In some, authority is still concentrated among the personnel working directly with the detainees, in others, there are formal and structured chains of command, leaving the operational-level staff with only limited amounts of discretion for their actions with detainees.

There is, of course, no one arrangement of command and control that would be appropriate for all facilities. Each agency will develop the one which best suits its own needs. It is essential, however, that any arrangement decided upon be clear and unambiguous, with specifically delineated responsibility and authority defined for each command level for each facility activity. These arrangements should also identify the proper location within the chain of command for dispute resolution.

It may require considerable effort on the part of local agencies to develop and implement appropriate command and control arrangements. Their implementation, however, where good policies and administrative guidelines have also been implemented, further enhances

the effective operation of the temporary detention facility. Together with these written directives, clear, rational command and control arrangements can reduce the possibility of adverse court decisions.

Staffing the Temporary Detention Facility

Once the policies, guidelines and mechanisms for control of the facility activities and personnel are in place, it is important to consider the selection and hiring of personnel to staff the facility, the qualifications they should have, and the manner in which that staff should be organized. As with most other aspects of temporary detention, the facilities we studied had wide variations in the practices followed in this area.

In some agencies, detention facility staff members are sworn officers from the local law enforcement agency assigned to duty at the facility. In some others, particularly at stationhouse lockups, law enforcement officers on duty at that site serve as facility staff on an as needed or rotating duty basis and some volunteer for that assignment. Some agencies in contrast, employ only civilians as detention facility staff.

Many civilians hired to work in detention facilities are persons who had wanted to become law enforcement officers, but who, for one reason or another, have not yet been able to obtain sworn law

enforcement positions. Others choose to work in the facilities because of the perceived challenge and opportunities for advancement. Law enforcement personnel staffing the facilities are often on probationary status after completing the training academy. (Several departments, including the Los Angeles County (California) Sheriff's Department require that newly graduated officers spend their first one to two years of service in the corrections/detention facility.) Other law enforcement officers choose to work in the facilities because such work often has fixed, non-rotating duty hours, or some other benefit not available to them in their regular assignments. Other officers are there because of injuries or other physical conditions which limit their ability to function in other law enforcement roles. One agency included in the study selects detention facility staff from the pool of qualified candidates for police officer positions who are awaiting an opening in an academy class.

There were also a number of different patterns of organizing the staffs. In some agencies, civilians serve as uniformed jailers or corrections officers, being non-sworn employees of the local law enforcement agency. In those instances where law enforcement personnel staff a facility, they are serving in sworn status as department members with no responsibilities for patrol. A few communities have organized separate corrections branches independent of the local law enforcement agencies. These correction agencies are responsible for

all confinements and detentions within their communities, including temporary detention.

The criteria used for selecting personnel to serve as facility staff members were also found to vary among departments. In some, the requirements are no different than those required of persons serving in sworn law enforcement status. In other agencies the requirements were less stringent. The use of lower selection standards is explained by the fact that salaries for positions in detention facilities are relatively low and that there is little opportunity for advancement beyond the entry position. Under these circumstances, it is necessary to lower hiring standards just to attract persons to fill these positions.

After reviewing the hiring and organizational practices that agencies currently follow, we believe that there are a number of improvements that could be made. Our recommendations are, however, predicated upon our particular perspective that temporary detention is a corrections-like function, rather than a law enforcement one.

Unlike patrol and other law enforcement assignments, work in the temporary detention facility requires that staff members be within constant physical proximity of detainees. The environment of the facility is often laden with tensions on the part of both staff members and detainees. Staff members must work in the knowledge that at any time they could be victims of physical violence. Moreover, staff must

CONTINUED

1 OF 3

be motivated to process all detainees in as dispassionate and effective a manner as possible, even those who may be charged with heinous crimes. All in all, it is a work environment which requires the best of staff, not the least qualified or the most affordable.

From this perspective many of the current patterns of personnel selection are inappropriate. We are not supportive of agency policies which place probationary law enforcement officers in the detention facility as an initial duty assignment. We believe that because this officer will spend his/her first assignment dealing primarily with persons accused of crimes, it is possible that when he or she goes to patrol or some other assignment, interactions with the public may be tainted by this constant contact with accused criminals.

We are also not in favor of allowing sworn law enforcement officers fit for patrol duty to voluntarily staff these facilities. In light of current budgetary contraints, we believe the skills and training of these persons are better utilized in field services than in the detention facility. This same condition is true regarding the involuntary assignment of law enforcement officers to detention facility duty, except those assigned to the facility because of a physical condition. In instances of involuntary assignment, the officer may not be motivated to perform at a satisfactory level.

It is our contention that agencies should hire personnel specifically for the task of operating the temporary detention

facility, and that educational, training, and other appropriate job related criteria be established for selecting individuals for that assignment. We also recommend, because of the interpersonal character of this work, that psychological assessments be conducted of all candidates as to their suitability.

Once hired and trained for the position, the individual's performance within the detention facility should be closely monitored and evaluated for at least one year, with less frequent evaluation thereafter. Necessary adjustments or improvements in performance should be suggested by appropriate managers and supervisors, and performance monitored to insure their adoption. We also suggest that when these personnel are on duty, they have sworn status as corrections or detention officers so that any actions they take are under color of law. They should also wear uniforms identifying themselves as facility staff. Finally, these persons should receive salaries which are compatible with those of law enforcement personnel.

With respect to the organizational structure within which detention facility staff work, we strongly support the creation of separate corrections agencies. Obviously, this arrangement is feasible only in larger communities. In others, where such an approach is not possible, we recommend the separation of detention functions from law enforcement. In most large cities this means that the sheriff's department and not the agency operating the patrol function should have responsibiliy for temporary detention. In communities where the

sheriff is also responsible for law enforcement, a separate division within that department should be established to operate all corrections facilities, including temporary detention. If these general guides were followed, many of the personnel problems of turnover, improper behavior and so forth, would be greatly reduced.

Training for Detention Facility Staff

No matter how well qualified the staff selected to operate a detention facility, proper training is essential for insuring their maximum effectiveness once they are operationally deployed. There were, again, vast differences among the study agencies in the amounts and kinds of training they provided to newly hired facility personnel.

In several agencies, particularly those which used law enforcement personnel to staff their facilities, most individuals had received law enforcement training at the police academy. This training was, in some departments, augmented by further training in subjects relevant to operating the detention facility. In other departments of this kind, the law enforcement officer receives no further training.

In departments which use civilian or non-sworn police personnel, the training is of two basic models. In some agencies, only on-the-job training is provided. In others on-the-job training is supplemented by classroom instruction. The "OJT only" model seemed

prominent. Once of the most interesting findings from our interviews with these civilian jailers was that most would like more training and some had, on their own initiative, subscribed to mail order training courses and requested other information from the National Jail Center.

Persons selected to work in temporary detention facilities should receive relevant formal instruction in subject areas related to service in the facility. Because our position is that temporary detention is a corrections function, we suggest that the curriculum for that training could be built topic areas recommended by the American Correctional Association. These are:

- o first aid training;
- o cardiopulmonary resuscitation (CPR);
- o security procedures;
- o supervision of inmates;
- o report writing;
- o significant legal issues in temporary detention;
- o detainee rules and regulations;
- o grievance and disciplinary procedures;
- o rights and responsibilities of detainees;
- o fire emergency procedures;
- o communications skills;
- o special needs of public inebriates, chemically dependent and female detainees;

- o problem solving and guidance;
- o problems of the mentally ill or retarded;
- o issues in detainee health care;
- o preliminary health screening techniques; and
- o custody and jail related training.

The training in these areas should be augmented by instruction concerning some of the more significant problems affecting the local facilities. Once the formal training has been completed, the OJT portion of training should be conducted, followed by the routine assessment and correction of job performance. These assessments should occur at regularly scheduled intervals or when required in critical instances. Supervisors and managers must be actively involved in this phase of training.

It may be argued by some that providing intensive training to new employees, particularly when there are only a few of them, is exorbitantly expensive. Our reply to this charge is that although the training is expensive, the benefits to the department justify the costs. Not only are staff better able and prepared to carry out their responsibilities, the fact that staff have received recommended training is a further defense against possible liability and litigation. In fact, it is very important that personnel working in small facilities be well trained, for they are likely to be responsible for almost every aspect of temporary detention.

The Use of Non-Sworn Personnel in the Detention Facility

In many of the larger departments a number of the clerical and other administrative tasks were completed by non-sworn, nonuniformed civilian personnel. Departments employed those persons in such roles as fingerprint technicians, secretaries, property clerks, and so forth. Some had roles which brought them into direct contact with the detainees. The use of untrained civilians in roles that place them in direct contact with detainees can sometimes have serious consequences for the employee and for the entire temporary detention process.

One of these difficulties is that, although either a civilian or a sworn employee may, at times exercise poor judgment in dealing with detainees, the consequences are more likely to be negative for the civilian employee. For example, in one large, middle Atlantic community, we observed a physical assault by a detainee upon a civilian fingerprint technician. This assault occurred when a detainee, using an alias, was taunted by a fingerprint technician with information about his true identity that had been gained through analysis of the detainee's fingerprints. The likelihood that such an assault would have occurred against a uniformed officer under similar circumstances is much lower.

In another instance, we noted that civilian employees sometimes acted in a manner which seemed to exceed their delegated authority. They would sometimes give orders to detainees which they could not legally enforce. The detainees recognized this fact, failed to obey and derided the civilian who had given that order. This also led to increased tension.

Although civilian employees are important to the detention process, their direct contact with detainees should be limited. This means that while a civilian photographer or fingerprint technician may be needed to develop and print photos, or to classify or identify fingerprints, sworn or delegated, uniformed facility staff should be present when contact with the detainee is necessary. In fact, only uniformed, sworn staff should engage in contacts with detainees. Removing civilians from contact with detainees lessens the possibility of their being physically assaulted or being taken hostage by detainees. It also eliminates another facet of the facility's operation which could involve court litigation.

The Need for Improved Recordkeeping in the Temporary Detention Facility

A final concern regarding the administration and management of temporary detention facilities is the collection and use of data. The effective management of the facility is based upon the collection and the analysis of information regarding events in the facility. Many

facilities and departments, however, keep only very limited information of this type. In fact, data collection was one of the least frequent agency functions observed during this study. Most agencies routinely collect only information about serious incidents in the facility and, therefore, we believe that present data collection efforts in many departments only inadequately collect managment information. At a minimum, we believe that the following data should be collected to correct the current inadequacies. They are:

- admissions by sex, age, race, nationality, and charge;
- length of time each person was detained;
- serious incidents;
- watch log entries, i.e., time detainee observed, etc.;
- medications administered by type, time, officer, etc.;
- assaults;
- escapes;
- suicides and attempted suicides;
- detainee injuries;
- staff training log by hours of instruction and subject matter;
- incident reports;
- detainee medical status at admission and release;
- transportation-related data; and
- court suit data including number of suits, charges, and outcomes.

In addition to these basic data, each agency may want to collect other, locally important data. An example of these additional data is provided by the Sheriff's Office of Fairfax County, Virginia, which in addition to the data shown above also collects information related to:

- o detainee court status;
- o detainee training and education levels at admission;
- o special service programs required by that individual; social services, alcohol-drug counselling, etc.;
- o hours of organizational volunteer services in the facility, and projects completed; community services administered in the facility; drug counselling, mental health, family counselling, etc., and hours of services.

Of course it is not easy to collect data of the kinds and specificity we recommend. Agencies that do so will find that initially it places a fairly heavy administrative burden upon them, but as time goes by and these data collection efforts are routinized within the facility's operations, however, the task will become much easier. Moreover, agencies which collect and analyze these data will find them useful in making decision about the allocations of resources and about other areas of management. These data can also be used as evidence to counter certain allegations or charges in court.

The problems considered in this chapter are the ones which most often affect the management and administration of the temporary detention facility. We believe that these problems can be resolved and that facility administrators should give careful consideration to implementing the recommendations made here.

CHAPTER 5

PROBLEMS OF RESOURCES FOR TEMPORARY DETENTION FACILITY OPERATION

It is important to remember that temporary detention facilities do not operate in a vacuum, independent of the conditions and factors affecting the communities in which they are located or in the local criminal justice system. Instead, conditions in different parts of the community sometimes have an enormous impact on detention facilities and can often lead to or compound the problems described in earlier chapters. Most of these problem-producing conditions are not within the direct control of facility managers and administrators, but they are the ones who must deal with and resolve the negative impacts that occur within the detention facility as a result of these external factors.

The most important of these conditions are:

- o inappropriate or non-existent national and state standards for operating temporary detention facilities;
- o the lack of appropriate community resources that can augment those that exist within temporary detention facilities; and
- o inappropriate actions by law enforcement operations personnel during temporary detention.

In this chapter we examine the effects of these factors on temporary detention facilities and explore some of the actions that

facility administration can take to reduce or eliminate their negative effects. Our first concern in this regard is for the development and full implementation of national and state standards for detention facility operations.

The Need for National and State Standards for Detention Facility Operations

One of the most impressive findings from our research was how greatly agencies differed in the practices, procedures, conditions, even the structures used in the temporary detention process. These differences were found, in many instances, to contribute significantly to one or more problems within facilities. That these differences exist and so often with negative results clearly illustrates the need for the development and implementation of nationally uniform practices and procedures. It should be noted that while many states have developed and implemented jail standards, those standards in many instances only peripherally address the operation of the temporary detention facility. This is true even when the standards are titled in ways suggesting that they also extensively cover the temporary detention facility. We believe from our review of a sample of currently available state jail standards that few, if any, adequately address the conditions of temporary detention.

Only recently with the work of the National Commission on Accreditation of Law Enforcement Agencies has a complete set of standards adequate for temporary detention been developed. Those standards, however, have not yet been implemented within any agency nor has the evaluation of their operational utility been completed. Also, despite the fact that both the National Sheriff's Association and the American Correctional Association have promulgated standards for operating temporary detention facilities, those standards have yet to gain national acceptance or implementation. As a consequence there are currently no recognized national standards in this area. Forty-five states have developed statewide standards intended, in part, to remove disparities of the kind just described from facilities located within them. Unfortunately, these standards have largely been prepared to cover only the operations of the jail and other long-term facilities. In only three states where the study sites were located had standards for temporary holding facilities been developed. In another four states there were on-going efforts in this direction, but fully half of the states visited during this study had made no visible effort toward the development of standards specifically for temporary detention facilities.

Even in those states where such guidance had been enacted, the managers and administrators of temporary detention facilities were not optimistic about their effectiveness. Several administrators

reported that very often the standards were couched in terms that required only a minimally adequate level of performance, rather than establishing a higher standard as the one acceptable for accreditation. Satisfaction of the specified minimums often required no change, even in regard to conditions which may have been abhorrent. Another concern was that the standards were often written using wording that is imprecise and subject to a number of interpretations. Another preception among administrators is that even when the standards are clearly written, their usefulness is limited by lax or haphazard enforcement and, to them, the lack of enforcement is the most serious deficiency affecting the use of these standards.

Many facility managers perceive that favoritism exists in the accreditation of facilities with some being granted accreditation by virtue of the political strength of their administrators. Even more galling to some is their belief that when facilities fail to meet the standards, they are in no way censured. One administrator explained this situation by saying that "the only difference in this state between an accredited jail and one that isn't, is the plaque on the wall of the sheriff whose jail is accredited."

The lack of meaningful and fully implemented state standards has the effect of, in part, reducing the efficiency of local agencies in preparing their internal policies and guidelines, because there is no clear guidance as to what is expected in operating the facility.

The lack of such guidance leaves much of the content of those internal guides to the discretion of the facility managers and administrators who may structure their facilities' operations for convenience alone.

At this stage of the report it should not be surprising to the reader to find that we noted were significant differences among agencies in the quality and content of the guidance which had been prepared. Some agencies had developed guidance that may be described as complete and comprehensive. Others had developed guidance that is more general, with specific emphasis only on emergency or catastrophic incidents.

To correct this lack of uniformity, we believe that facility administrators as well as local officials must press the demand for the development of state standards for local holding facilities. These standards should reflect the recommendations of the National Commission, as well as any conditions that are peculiar to the state. The standards developed by the Commission that are applicable to the holding facilities are presented in Appendix B as a means of acquainting the readers with their content and format. The Commission's standards could be used as the beginning of any effort at developing state standards.

Once it is decided that statewide standards for these facilities be developed, we recommend that any that are developed conform to several criteria, described below.

They should be clearly and precisely written, and clearly require action on the part of the agencies when they are not in compliance. Further, once a reasonable length of time has passed since an agency has implemented the state standards, a rigorous assessment should be made by state officials of the agency's compliance with those standards. Those agencies failing to achieve satisfactory levels of compliance after two assessments should be prohibited from holding detainees. The operators of such facilities and other relevant public officials should be penalized by fine or other punishment for this failure. In those instances where the deficiencies are the result of willful failure to act criminal proceedings including incarceration should be pursued.

By themselves, no set of standards, even when fully implemented, can resolve all of the external conditions affecting the temporary detention facilities. The implementation of such standards is, however, a step in the right direction. One of the problems they cannot resolve is the lack of adequate resources within the facility and the community, the topic addressed next.

Developing Adequate Resources for Temporary Detention

The lack of adequate physical resources for effectively operating the temporary detention facility was identified by a number of

respondents as a serious problem. The most serious of these deficiencies were:

- o the use of facilities that lack adequate resources for properly confining or restraining detainees and that do not allow the orderly completion of the administrative tasks in the detention process and whose structure and architecture includes built-in threats to safety, e.g., sharp corners, blind spots, narrow corridors, etc.;
- o the lack of financial and other resources within the community and the detention facility to deal with special populations such as public inebriates, the mentally ill and mentally retarded, and juveniles.

Many of these conditions have been addressed in earlier chapters of this report. At this point, however, we would like to identify and discuss, some of the various factors leading to these detrimental conditions.

The Use of Inappropriate Structures as the Sites for Temporary Detention

A particularly significant finding of this study in regard to the kinds of structures that can be used for temporary detention is that there appear to be no legal descriptions of what characteristics should be found in the structures used for this purpose. Despite this oversight, those responsible for and familiar with detention facility operations are adamant in the belief that each facility should at least, meet the following criteria. They should allow for the provision of proper detainee care, including health services and basic

hygiene. There should be provisons for the secure retraint and separation of detainees from one another and from facility staff. Finally, the interior design of the facility must be such that it allows for the speedy and efficient completion of the various administrative tasks in temporary detention.

If these criteria were applied to the facilities visited during the study, many would be found wanting. The earlier chapters described the kinds of inadequancies regarding detainee personal care and restraint which exist in those facilities and they will not be reiterated here.

With respect to the internal arrangement of the facilities, we observed that, in four agencies these arrangements contributed materially to the inefficient processing of detainees. This included the necessity to move from one processing station to another, e.g., booking desk to fingerprint station to photography in criss-crossing patterns often bringing detainees into direct, unsupervised contact with one another and with facility staff. The problems caused by these undesirable traffic patterns were often compounded by the fairly limited space available in most facilities. Only a few detainees could be processed at any one time in all but the largest facilities, limiting their effectiveness during times when many arrests are being processed.

These deficiencies not withstanding, there are other concerns for the design characteristics of temporary detention facilities. One is their location relative to the community's geography. We believe that, to the extent possible, all such facilities should be located in central areas of the communities they serve so that a single facility can service the entire community. If, because of the community's size or geographic barriers, such as rivers, or other obstacles, it is not possible to serve the entire community, then detention facilities should be located so that they serve a comprehensive area of at least two or more adjoining law enforcement precincts or districts.

Centralization can assure a more effective use of administrative and technical resources than would be possible if each precinct or district were allowed to hold and process detainees. For example, by locating all fingerprint records and computer resources in a central detention facility, and by also processing all detainees in that facility, many of the costs and administrative problems associated with decentralized detention can be reduced. Centralization eliminates the need to transport detainee fingerprints from the various lockup facilities to the central files for analysis, as is now being done in some agencies. It would end or reduce the need to equip precinct lockups with computer terminals in order to access the criminal information system. Centralization can also allow the more effective provision of several detainee services, including food service, medical care, specialized handling for suicidal detainees, the mentally ill, and other special populations.

No matter where they are located though, the structures or the areas within them designated as temporary detention sites should meet the following criteria:

- o They should have no purpose but to hold and process temporary detainees.
- o They should accommodate and allow for the separate confinement of each detainee; the areas in which these individuals are held should also provide the detainee with separation from facility staff members.
- o Areas for taking photographs, fingerprints, and interrogating detainees should be included within the facility, and they should be arranged in such a manner as to facilitate effective completion of these tasks.
- o Chairs, benches, and other items of furniture which might be used as weapons should be excluded from the facility unless it is an absolute certainly that these items cannot be removed from the surface to which they are attached.

Further, the concerns raised in earlier chapters regarding matters of safety, architectural hazards, suicide prevention and so forth, should also be considered in the decision to designate an area or structure as a temporary detention facility.

Once structurally adequate facilities for detention have been secured, attention should be given to the development of resources in the community to augment those in the facility.

Developing Community Resources to Augment those in Temporary Detention Facilities

Although the detention facility is expected to perform a number of different tasks and to serve several different populations, many of the resources needed to accomplish these responsibilities must come from the community. Included are resources for treating the mentally ill and mentally retarded, public inebriates, and juveniles and the provision of emergency medical services. In some communities, however, it is precisely because these resources are limited or unavailable, that the detention facility must assume the responsibility for handling these groups.

Many communities faced with deficiencies have corrected them through the development of cooperative agreements between the holding agency and other agencies located either in the same community or in adjacent communities. Cooperative agreements with other agencies and organizations were found to have been used by agencies to secure staff training in areas such as fire prevention and fire fighting, and the recognition of mental health problems. These agreements have also been used to secure the services of medical personnel on an on-call basis. The services which can be secured through these agreements seem to be limited only by the kinds of services needed in the facility and the initiative of its administrators.

As an added benefit, the need for service within a temporary detention facility can, in some instances, be the catalyst for meeting that same need in the larger community. For example, if the detention facility is without access to medical care for detainees because there are no doctors in the community, means by which medical care is secured for the facility might be expanded to provide medical care throughout the entire community. In several of the communities studied for this report, the executives of holding agencies had been instrumental in the development of community-wide care programs for public inebriates, the mentally ill, and juveniles. Their expectation is that the services of these programs will, in the long run, benefit the temporary holding facility specifically, even though not unique to that objective.

Two administrators from the Fairfax County (VA) Sheriff's Department who have made extensive and successful use of cooperative agreements described the procedures they follow in doing so. Once they have identified a need for a particular capability they first analyze their department's own resources to determine if the need can be met internally. If internal resources are inadequate, the services of both public and private agencies located within their communities or adjacent ones are surveyed for the purpose of determining which, if any, of them are capable of providing the required service. Once a potential provider is found, that provider is approached with a request to supply the needed services to the holding agency.

For example, one instance, this agency had the need to provide substance abuse treatment. Because such care was not available in the community, the facility's administrator worked with, encouraged and supported citizen groups in their efforts to develop a local program with this focus. Although this pro-active role in the development of community resources may seem to go beyond the purview of the holding agency's official mandate, the detention facility administrators who undertook these efforts insist that as the heads of community agencies they must be concerned with all facets of community life. They feel it is incumbent upon them, when recognizing a community need for service to do all they can to secure that service for the community, while working to fill their own immediate needs.

Our final recommendation with regard to securing adequate temporary detention resources is the development and construction of regional detention facilities. Regional facilities represent a means for the economical pooling of resources among adjacent communities to house and process detainees. One advantage of such an arrangement is that each of these cooperating communities is required to provide only its fair share of the funds necessary to build and operate the facility. This makes it possible for small communities to gain access to adequate temporary detention resources without incurring an unacceptable financial burden.

Despite this substantial benefit, the development and operation of regional facilities is not without obstacles. Among these are

establishing each agencies responsibilities and authority for transporting detainees, the judicial and jurisdictional responsibilities for detainees while at the facility, and other problems regarding access to counsel, to visitors, and to release. These difficulties are not insoluble, however, and should be addressed in the early stages of planning for a regional detention facility.

Duration of Temporary Detention in Planning for Resources

One final concern in planning for adequate temporary detention resources is the average amount of time any detainee is likely to be held in the facility. The shorter this time the fewer services the agency is likely to require. It is critically important, then, that when agencies begin to assess the need for resources within the detention facility, they consider several related questions:

- What is the maximum length of time an individual is likely to be held in the temporary detention facility, as well as the average length of detention?
- What mechanisms can be used to minimize the length of the temporary detention period?
- What are the minimum services required during that time period?
- What other services should be available for that period, if needed?
- What is the best means of providing each of these ancillary services, in terms of immediacy of access, quality of service and economy?

The answers to these questions can help define the resource and other parameters which should be considered in planning for detention.

The Role of the Arresting Officer In Temporary Detention

During this study, enormous variations were found among agencies in the kinds of responsibilities the arresting oficer is required to assume in the temporary detention process. In some agencies these tasks are minimal while, in others, the arresting officer is responsible for significant portions of the process. In three agencies studied, the officer who makes the arrest is responsible for completing every task in the booking process, including taking fingerprints and photographs. In one other agency, the arresting officer, although having no active role in the process, was required to accompany the detainee throughout the entire proceeding, up to and including the initial court appearance. In all but two agencies, the arresting officer is at least required to transport the detainee from the arrest site to the temporary detention facility. These differences in practice and even the fact arresting officers are so deeply involved in the temporary detention process can lead to a number of problems. Among these are:

- o a reduction in the availability of patrol personnel to respond to calls as the result of these personnel being out-of-service while completing tasks associated with temporary detention;

- o poorly executed searches leading to the concealment of weapons and other dangerous items.
- o abuse of the police power to make discretionary arrest for personal and other reasons; and
- o unplanned financial expenditures.

The primary workload demand on most law enforcement agencies is to respond to calls for service. When patrol personnel within a given area are not available to respond to calls by virtue of their being directly involved in the temporary detention process, the ability of the agency to accomplish this task is severely taxed. Although it may be possible to direct personnel from other areas to respond to calls, this action further taxes the agency's call response capabilities. Clearly, the more frequently this situation arises and the longer the time out-of-service, the greater the problem.

It was found in the study that in some instances patrol personnel were out-of-service for as much as 24-36 hours. This was true particularly in those instances when they accompanied the detainee throughout the entire detention process. When only required to complete the administrative procedures in detention, these persons were out of service up to four hours. Where arresting officers were only required to transport detainees from the scene of arrest to the detention facility they were out-of-service for periods of times ranging from 45 minutes to as long as five hours, depending upon the distance they were required to travel. In one county, officers transported detainees from as far away as 80 miles.

Concern over how well the arresting officers conducted personal searches of the detainees was expressed by many detention facility personnel. Several respondents noted the fact that in a number of instances, that while making personal searches of new arrival detainees they found dangerous weapons, drugs, and other contraband that had been missed during the arresting officer's initial search. Some facility staff members also noted that some patrol personnel so physically and mentally abuse detainees that, once admitted to the detention facility, detainees direct their anger toward the facility staff--either by assaulting them or by withholding their cooperation. There was such a strong relationship between the arresting officer's treatment of the arrestee and the arrestee's subsequent behavior that detention facility personnel in some locations state that knowledge of the name of the arresting/ transporting officer is all they need in order to anticipate whether or not a detainee will require special care--medical or otherwise. In one community facility personnel identified officers who almost invariably made arrests which included "resisting arrest" charges. Such behavior on the part of arresting officers obviously can increase the already high levels of tension within the facility that were described earlier in the report.

There is also the problem that patrol officers may abuse their discretion to make custodial arrests as a function of their responsibilities in temporary detention. For example, in a major

community where patrol officers are required to accompany an individual through the entire detention process, officers who must work beyond their regular tour of duty in order to meet this requirement are paid at an overtime rate. This sometimes leads to a situation where patrol officers desiring additional pay may, at the end of the shift, make an arrest for a very minor offense in order to acquire this additional pay. The reverse is also true. At the end of an officer's tour he or she may be willing to arrest only those persons perceived to have committed very serious offenses, so as not to have to spend the time accompanying a detainee through the detention process. Should knowledge of either of these practices come to the public's attention, it would certainly serve to undermine public confidence in law enforcement.

The involvement of patrol personnel in the detentin process also has serious financial implications. So far as it could be determined in this study, law enforcement agencies ordinarily do not budget for activities associated with temporary detention as part of the patrol function. Therefore, the use of patrol personnel and vehicles for transporting arrestees to the detention facility, diversion of patrol units from one area to another to respond to calls and overtime pay for officers involved in the detention process often represent unplanned expenditures, stressing the limited budgets under which most law enforcement agencies now operate.

Some of these problems result primarily from the quality and content of the training law enforcement personnel receive regarding their responsibilities for temporary detention. Very often they receive absolutely no formal training for these responsibilities. What's more, many facility staff believe that the training these oficers do receive does not reflect the correctional aspects of the detention process. These respondents report that the patrol officer is trained to act aggressively in resolving many of the situations encountered while on patrol but that negotiation is the key to effective functioning in the temporary detention facility. These respondents also believe that in some instances the conditions associated with the patrol officer's efforts to arrest the detainee, (e.g., a particularly brutal crime, a high speed chase), may also work against effective officer handling of detainees.

Many of these problems can be alleviated by limiting the role of the patrol officer in the temporary detention process to no more than completing the detainee's arrest; persons trained in the temporary detention function should be responsible for all other tasks in this process beginning with transportation of the arrestee from the arrest site to the facility. Of course, this solution is not feasible in many communities. In most communities, therefore, patrol personnel are going to be responsible for at least some phase of this process. If possible, their role should be limited to transporting the detainee to the detention facility. The personnel employed in that facility

should, even when they are members of the same agency as the arresting officer, be attired in uniforms that are distinct from that worn by patrol officers to reinforce the fact for the detainee that there are differences in the roles of these two groups.

On the basis of information discussed in this chapter, it is clear that factors external to the temporary detention process can have profound and lasting effects upon the operation of temporary detention facilities. Because they are external to the process, however, too often these factors and their consequences are overlooked either in planning for the facility's operation or as possible causes for the problems encountered in operating the facility, or both. This chapter was intended to create an awareness among facility managers and others of the possible impact that factors such as the lack of national standards or inadequate resources within the community can have upon the operation of the detention facility.

CHAPTER 6

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The foregoing chapters of this report have described and discussed the most serious problems that local law enforcement agencies encounter in carring out temporary detention. Temporary detention was defined in this study as the process by which recently arrested persons are prepared for their initial appearance before the courts. This process:

- o begins once an individual is taken into law enforcement custody;
- o includes the completion of a number of distinct administrative procedures, sometimes including the physical confinement of the detainee;
- o lasts no more than 24 hours, except as the result of court scheduling or other circumstance, in which case it may last for 72 hours or longer; and
- o ends with the detainee's presentation before the court, unless that individual was able to make use of a pre-court release mechanism, such as citation or summons release.

The critical aspect of this report was to describe the effect of these different practices as either causes or contributors to problems affecting temporary detention facilities. The data for this study were collected using several different methodologies: field observations were made of the temporary detention practices in effect

at 19 agencies serving communities of different sizes and geographic locations; structured interviews were conducted with the managers and staff members of temporary detention facilities, with law enforcement agency executives, with prosecutors and defense counselors, with representatives of law enforcement and criminal justice professional organizations, and with representatives of public interest groups active in the areas of jail conditions and criminal justice; and reviews of case law and the professional literature were conducted. The data for this study, all had as their focus, the perspectives of the agency responsible for temporary detention.

In the following sections of this chapter we will highlight the findings reported earlier, summarize our conclusions from these findings and offer recommendations for improving the operation of local detention facilities. In addition we will describe those aspects of temporary detention facility operation which were not addressed in this study but which should, at some later time, be the subject of intensive, empirical examination.

Summary of the Findings

We began by noting that the findings from this study are particularly instructive in developing possible solutions to problems commonly encountered in operating temporary detention facilities. They also help to dispel a number of commonly accepted notions about both the temporary detention process and about temporary detention facilities. Perhaps the most prevalent of these misconceptions is that most

detainees are held in small cell areas of the kind often seen on television and in the movies. Instead, many agencies operate relatively large, centralized facilities. Even when detainees go first to a precinct lockup or other small temporary holding facility, their stay at that facility is likely to be very brief. Soon after arrival at these "stationhouse lockups" they are likely to be transported to a central facility for further processing.

We also found that there really is no standard temporary detention process. There are probably as many ways for carrying out the detention function as there are agencies responsible for carrying out temporary detention. This happens despite the fact that all of these agencies have the goal of insuring the detainee's initial appearance before the court. Depending upon the community, any one of several agencies was found to be responsible for the temporary detention facilities. In some communities it was the police department, in others the sheriff's department, and in others separately chartered corrections agencies are responsible for their operation. Ordinarily, these corrections agencies have no direct law enforcement responsibilities, and in many instances, neither does the sheriff's department.

It is also important to note that the practices that an agency chooses to follow, coupled with prevailing local conditions that

generate most of the problems that agencies experience. For this reason, there is no single, unitary "problem of temporary detention," rather there are a series of unique, agency-specific problems. Agencies responsible for temporary detention almost always burden the designated holding agency with a host of legal, economic, managerial and other responsibilities. These burdens can become particularly onerous not only to the agency but also to the detainee when they are improperly conducted. The detained individual may suffer losses such as employment, family disruption, physical injury, even death. The agency may be required to pay large damage awards or to invest substantial funds to make court-ordered changes in the physical features of the detention facility or in its operational procedures. In some instances, the results of improper conduct of the detention facility can include damage to the careers of the supervisors and staff members of that facility and even of community officials and others responsible for its operation. Because it is important that the temporary detention facility be safely and efficiently operated, this study was conducted to provide persons responsible for operation of the facilities with information that can be used to improve their functioning.

The structures used by these agencies for temporary detention purposes followed a number of different geographic and structural arrangements. In some agencies there was one centrally located facility, others used both a central facility and a number of small

subsidiary or satellite facilities known as "lockups." Central facilities were usually located either at the agency's headquarters or in the municipal or county jail. The lockup facilities were found in law enforcement stationhouses.

The use of other "facilities" that do not qualify as structures for detention was also reported to us, but we cannot verify their existence. These include the use of abandoned goldmines and automobiles, chairs and benches bolted to the floor to which handcuffs have been attached, even a flagpole, to which detainees are shackled until they can be transported to another facility.

With the exception of these unusual facilities, the detainee processing procedures are usually the following:

- o transportation to the detention location from the arrest site;
- o reception and admission to the detention facility;
- o completion of administrative proceedings, fingerprinting, photography, collection of biographical data, etc.;
- o confinement or restriction of the detainee's movement until he or she can be taken to court, or released prior to that event; and
- o presentation before the court.

The practices followed in carrying out these procedures differed from agency to agency. Moreover, these differences in practices, coupled with the differences in other aspects of the

facility's operation--number of detainees, length of detention, facility size, structural features of the facility, and so forth--tended to produce or contribute to a number of the problems we examined in this study.

Those problems primarily concerned the provision of safety to detainees and facility staff during all phases of operation, efficient accomplishment of the administrative functions in the facility's operation and provision of adequate care and services to the detainees. An example of this was that in one community there were no provisions for providing the detainees with hot meals, despite the fact that detainees were held for as long as 24 hours before going to court. In a different community, the lack of resources to provide detainees with hot meals was not a problem to the agency as detainees remained in custody ordinarily no more than 4 hours.

In addition to the effects of these differences in practices, we found other factors contributing to the problems in detention facilities. The most important of these were that:

- o Temporary detention facilities were built to hold healthy, adult male detainees; unfortunately their populations now routinely include persons with poor health, the mentally ill or retarded, public inebriates, juveniles, and females.
- o Facilities built to serve urban communities often have insufficient capacity to hold the number of detainees brought there.

- o Facilities are often constructed or operated in ways that exacerbate the problems of safety and administration with them.
- o Many agencies do not plan or budget extensively for the detention process.
- o Detention facilities are forced, because of a lack of community resources, to assume responsibility for a number of different populations such as juveniles and public inebriates.
- o Most importantly, temporary detention is a corrections-like function rather than one which is law enforcement related.

The importance of these findings is illustrated by many of the observations we made in our study agencies. The effects of the interrelationships just described are not often considered when planning for the operation of the detention facility. In fact, we believe that very little comprehensive planning for this function ever occurs. Even when planning does occur, we are not certain that budgetary considerations are a part of those concerns except where they act to limit the facility's operations or activities.

We also noted that because of the corrections-like quality of the temporary detention process, it is inappropriate to involve agencies or personnel with patrol responsibilities in that process any further than the arrest stage. The involvement of patrolling agencies and personnel can at some points in the detention process introduce a number of difficulties, not the least of which is the reluctance of detainees to cooperate. The finding that law enforcement and patrol

agencies should not be involved in detention is particularly important because the study was intended primarily to help those agencies resolve the problems they were encountering in operating these facilities.

Another factor affecting detention facility operations is that sometimes unqualified persons are selected to staff these facilities and they are given inadequate or inappropriate training. Another problem is the absence or, at best, inadequacy of written policies and guidelines to guide the operation of those facilities.

We also found that there were differences by size of agency and community in the problems encountered. Smaller agencies more often faced problems related to the lack of resources. Larger agencies were more likely to be encumbered by problems associated with the volume of detainees requiring processing.

On a more positive note, many departments and agencies visited during this study recognize the deficiencies and shortcomings affecting the operation of the local detention facility and have implemented many programs and changes intended to correct them. One of these remedies has been the use of the municipal or county jail as the location for temporary detention. Other improvements have included the development and use of written directives and the achievement of performance levels set forth in state standards. Other communities have expanded the use of pre-arraignment release mechanisms such as summons or citation release. We offer the following recommendations as

further assistance to those agencies wishing to improve their detention facility operations.

Recommendations

Earlier chapters of this report offered a number of recommendations for correcting specific problems in temporary detention; at this point we want to describe and discuss some more global recommendations for improving the overall management of the detention function. Underlying these recommendations is our belief that temporary detention facilities must be viewed as a limited resource. The fact that it costs upward of $80,000 just to build one bed space, to say nothing of operating costs, suggests that in today's era of fiscal constraint. Resources for detention are, in some sense, non-renewable. The effective and efficient use of temporary detention must be based on a philosophy of conservation. We believe that this can result from the implementaion of the six efforts listed below:

(1) better planning for efficient operation of the facility;

(2) designating responsibility for temporary detention to the appropriate community agency;

(3) the development and implementation of written policies and guidelines and complying with applicable state or other standards for facility operation;

(4) developing physical standards for detention facilities;

(5) using regional detention facilities.

(6) limiting the use of temporary detention; and

Planning for Efficient Operation of the Temporary Detention Facility

The development of a comprehensive plan for operating the detention facility and carrying out the various procedures in temporary detention is the critical first step in improving the operation of the detention facility. That plan should outline for each phase or activity in detention its intended consequences for the whole process, its effects on the detainee, the resources needed for its completion and the resources available. It should also identify and incorporate allowances for those factors such as court scheduling, detainee volume, average length of stay, and so forth, which might affect those activities.

This plan, once developed, should be an integral part of the agency's budgeting process. Within that budget, line item appropriations should be made for each of the operational areas or activities identified in the facility plan. An important element in developing these appropriations is the use of data which has been routinely collected by the agency. This point brings us to an important consideration. Unless the facility has been routinely collecting certain kinds of data, the plan may lack emphasis in areas which are later found to be important. For this reason it is important that data collection

efforts and the necessary resources to effect them be incorporated into the facility plan. Then information collected can be used as the basis for possible revisions of that plan in the following operational year.

At a minimum, the following areas should be addressed in that plan:

- o detainee transportation;
- o personnel hiring, selection, training, and areas of assignment;
- o administrative procedures for processing detainees;
- o detainee medical services;
- o detainee access to counsel and family notification of arrest;
- o emergency mental health or psychiatric services;
- o sanitation and food service;
- o safety procedures;
- o facility upkeep and maintenance;
- o supply and material acquisitions; and
- o data collection.

Designation of the Appropriate Agency to Conduct Temporary Detention

The most appropriate agency for conducting temporary detention is either a corrections agency with no law enforcement responsibilities or the sheriff's department in counties where that

department serves more a corrections than a law enforcement function. The personnel assigned to operate the facility should be selected and trained specifically for this purpose. They should dress in uniforms that identify them as detention facility personnel, distinct from the uniforms worn by members of the local law enforcement agency..

In those communities where it is not feasible to establish this separation of functions, police personnel assigned to the detention facility should not be assigned to the patrol function, but should have permanent assignment to the detention facility.

Implementation of Standards Policies, and Guidelines

Once the overall operating plan has been developed and budgeted, the agency's attention should be given to specification of the operating procedures and practices to be followed in the facility, including the selection and management of its staff. It is essential that these aspects of the facility's functioning be managed and administered in accordance with written policies and directives that conform to the best available standards. Appendix B of this report contains the full set of applicable standards for operating temporary detention facilities that have been approved by the National Commission on the Accreditation of Law Enforcement Agencies. These can provide the reader with basic knowledge about the currently accepted practices in operating temporary detention facilities.

We also recommend that written directives be used routinely as a basis for assessing the agency's performance and identifying areas where improvement is needed. Should these deficiencies not be corrected, substantial penalties should be levied against the responsible administrators, staff members, or community officials for their failure to accomplish the needed improvements. These penalties should include fines, dismissal, and, in those instances where flagrant neglect or willful failure to act can be proven, criminal charges.

Developing Physical Standards for Detention Facilities

If there is any truth in the anecdotal evidence concerning some of the grossly inadequate physical facilities used for temporary detention--and we have every reason to believe that there is considerable truth there--an effort must be undertaken to develop standards concerning the physical structures and arrangements that may legitimately serve as detention facilities. A number of characteristics, based on considerations of security, safety and health, were outlined in Chapter 5. The characteristics recommended there include exclusive dedication to temporary detention; provisions for confinement of individuals physically separate from staff and other detainees; a well-planned traffic flow based on the requirements of activities routinely performed in the facility; absence of movable fixtures and furnishings; minimization of architectural hazards; maximum opportunity to observe

the detainee; other suicide-prevention features; and overall conditions conducive to hygiene and good health.

Until conditions and characteristics such as these become standard features of detention facilities, many of the problems encountered in managing such facilities will continue unabated.

Limiting the Use of Temporary Detention

Temporary detention is an essential element of the American criminal justice system. A careful review of the available information concerning temporary detention leads to the conclusion that many of the problems encountered here are the direct or indirect results of the over-use of detention. Simply stated, there is too great a reliance by the criminal justice system on the detention of arrested individuals prior to arraignment--the most effective means of resolving the problems in this area is to reduce the number of detentions.

It was noted earlier that more than 10 million arrests are made annually in the United States. The capability of the nation's detention facilities to process so great a number of persons is seriously limited by reasons of space and other needed resources. The result, therefore, is that most facilities are overcrowded and this overcrowding creates a host of other difficulties.

When a facility is overcrowded, there are often insufficient resources to administratively process, let alone confine or restrain,

detainees. When detainees are held for fairly long periods of time (12 hours or longer), the facility must provide other kinds of service and care (access to counsel, bedding, health care, food service) which again places further stress on the facility's capabilities. When the facility meets these needs only partially or not at all the facility's operators and administrators--even community officials--are liable for these deficiencies.

Many communities have proposed to resolve the dilemma by building new and larger facilities. Voters have often defeated the bond referenda to acquire the funds needed for construction; however, even in communities where new facilities have been built, they are often overcrowded by opening day. The answer clearly does not lie with more facilities, but in treating the currently available facilities as a scarce resource, requiring judicious management. In essence, this means detaining only those persons who cannot be handled in some other manner. The following recommendations are offered in this regard.

First, it is suggested that juveniles, persons who are mentally ill or mentally retarded, and public inebriates be excluded from facilities established for temporary detention of lawbreakers. Other community resources should be used to deal with them.

Another means of reducing the current overcrowding in detention facilities is through expanded use of pre-arraignment release mechanisms, such as citation and summons releases. Under these forms

of release, certain categories of arrestees can be released from detention, once they have affirmed that they will appear before the court at the directed time.

Citations and/or summons releases are given to persons arrested for misdemeanors and some non-violent felonies. Persons arrested under warrants are usually not eligible for these types of release.

Essentialy, these programs have two forms--field release and stationhouse release. In field release programs the arresting officer is required only to ascertain the identity of the individual and a current local address. Once these minimal requirements are met, the detainee signs the summons or citation which specifies the charge and the time of the court appearance. By signing, the arrestee agrees to appear on that date, with the understanding that failure to appear will result in the issuance of an arrest warrant.

Stationhouse release is a more complicated procedure. Here, all detainees are transported first to the stationhouse, precinct or similar facility, irrespective of the arrest charge. Once there, a search is made for outstanding warrants for that individual and the individual's identity is further verified, through fingerprints and photographs. Once the individual has been positively identified, and no warrants have been found for his or her arrest, the patrol supervisor, usually a sergeant, determines whether or not the arrest

charge is one for which citation or summons release can be used. If it is, that supervisor has the discretion to release the detainee.

Supporters of field release argue that it is an efficient use of law enforcement resources because:

- patrol personnel return to duty more quickly than if required to process the arrest;
- transportation to the booking or law enforcement facility is not required, thus conserving on fuel and vehicle depreciation costs;
- the number of personnel required at the detention facility to in-process detainees is reduced;
- family and employment disruption often associated with arrest and detention are minimized; and
- the number of persons confined in the detention facility is reduced.

Stationhouse release programs have fewer of these advantages. Sworn personnel are out of service while transporting arrestees to the facility and there is also the expense of providing that transport. The payoff, however, is that stationhouse release programs provide greater security through positive detainee identification, while decreasing the number of detainees held for more than a minimal amount of time.

Each of these programs benefits the criminal justice system in that only those persons requiring the most attention are processed through the detention system. At the same time, individuals arrested

for misdemeanors are spared from the trauma of prearraignment detention and its possible consequences and from the possibility of family or employment disruption.

Regionalizing the Temporary Detention Function

Under some conditions, the most appropriate means of resolving deficiencies in the detention process may be to develop regional detention facilities. These facilities are funded by and serve a number of adjoing communities. Although these facilities offer the advantage of conserving available community resources, they are not without a number of attending problems. These include transportation, jurisdictional and judicial responsibility for detained persons; and other problems regarding access to counsel and to release. These kinds of problems that occur can be resolved, but only if there is a great deal of coordination and cooperation among the communities involved in the regional center.

An option to the development of regional facilities is that communities faced with inadequate resources in temporary detention can opt for developing cooperative relationships among the various community government and private agencies to provide essential services. These might include services for mental health, juvenile, and alcohol referrals and they may also include staff training provided by other county or city agencies such as the fire department, school

system, and social services agencies. The possibility of such relationships is essentially limited only by the specific needs for service and by the initiative of administrators to call on community resources. In some instances, this may mean that law enforcement or other operators of detention have to be the prime movers in developing the necessary resource within the community. If, for example, the community detention facility has no access to reasonably close medical services because the community has no local medical resources, the sheriff or chief of police may have to take the leading role in securing such services for the community. Indirectly, through this action those services may then be secured for the facility.

An Ideal Model of Temporary Detention

At this point in our discussion we want to describe what we think would be the ideal model for carrying out temporary detention. This model is a summarization of the recommendations made throughout this report. Our model begins once the officer has effected an arrest. The detainee individual should be searched for weapons, contraband or evidence through a frisk an pat down search. When possible, this search should be augmented by the officer's use of a hand held metal detector. If the detainee and the arresting officer are of different sexes than no search, except a visual one, should be conducted. Whether or not a preliminary personal search is made of the detainee,

that individual should be handcuffed to await transportation to the temporary detention facility.

Once the detainee has been handcuffed and searched, the transporting unit should be called to transfer the detainee to the processing point or temporary detention facility. The transporting unit is staffed by members of the local corrections or jail agency. Two staff members should be assigned to each transporting unit. The vehicle used for completing the transporting should have multi-person capacity, with appropriate safety and restraint equipment. The vehicle should be either a van or truck and used only for the purpose of transporting temporary detainees. Prior to placing the detainee into this vehicle, he or she should again be searched by members of the transporting unit. Once the detainee has been placed into the custody of the transport unit the arresting officer(s) return to duty.

Upon arriving at the temporary detention facility the detainee should again be searched. The time using a metal detector and in instances when they are available, fluoroscopy machines. After the search, the detainee's handcuffs should be removed. Fingerprinting and photography should next be completed, followed by a check of local and national criminal information systems for any outstanding warrants of that individuals arrest. If none are found and the individual was arrested for a misdemeanor or minor felony, then that person should be released from custody at this point under a summons release. If the

individual cannot meet these conditions then he or she must be held until the first appearance in court can be made.

Holding facilities should admit only healthy adults charged with felong offenses. Juveniles and and persons needing special medical care should be processed at other more appropriate facilities. Staff for the detention center should be assigned to a separate corrections agency and should not be law enforcement officers. The staff should also be specially trained to carry out the detention function.

The facilities used for detention should be inspected for three times daily for necessary repairs and levels of cleanliness. All minor repairs, burned out bulbs, stopped toilets, etc., should be made immediately. Major repairs should be made as sooon as possible. Finally, appropriate safety precautions to prevent assaults should be followed whenever staff are in the proximity of detainees. All policies and standards applying to the operation of the facilities should be published and made known to all staff. Those policies should also be strictly enforced.

Areas Where Further Inquiry is Needed

In addition to the problems for which recommendations have been made, a number of other issues or concerns emerged during the study which could not be addressed due to limitations of time and other

restrictions. Foremost among these concerns is the pressing need to study the effectiveness of efforts to utilize and mobilize all available and appropriate community resources for use in the detention process. It is very likely that in the next few years the already limited finincial resources for detention will further decrease and this situation will require the development of alternative resources. These These include regional detention facilities and cooperative efforts. Study should be made now of the most efficient alternatives in this area, and guidance specific to developing these relationships should be developed and proposed. In addition, the following other areas should be studied:

- o a study of how other elements of the criminal-justice system and of local government affect the detention process, and of how the actions of each of the elements can be coordinated so as to increase the efficiency of the detention process;
- o a study of how law enforcement personnel and detention facility staff can better handle the problems of arresting and detaining the mentally ill/retarded and public inebriates; and
- o the impact of various pre-arraignment release mechanisms, upon the efficiency of the entire detention process.

These studies, once completed would provide a more complete vie of the nation's pre-arraignment detention process than is currently available and could further improve the effectiveness of that process.

TABLES

Tables

Table 1 Population of Study Agency Communities (n=19)

	n	%
1,000,000 +	4	22
500,000-999,999	4	22
100,000-499,999	3	15
50,000-99,999	3	15
less than 50,000	5	26

Table 2 Law Enforcement Role of Holding Agency (n=19)

	n	%
Agencies responsible for law enforcement patrol operations	15	79
No law enforcement patrol responsibilities	4	21

Table 3 Total Number of Personnel Assigned to Holding Agency (n=19)

	n	%
1,000 or more	6	32
500-999	1	5
100-499	5	26
50-99	5	26
less than 50	2	11

Table 4 Title Designation of Holding Agency (n=19)

	n	%
Police Department	11	58
Sheriff's Office	5	26
Corrections Branch	3	16

Table 5 Facilities Available for Temporary Detention

	n	%
Central Facility Only	13	68
Central Facility and Stationhouse Lockups	6	32

Table 6 Average Number of Hours Detainees are Held (n=19)

	n	%
up to 48	2	11
up to 36	11	5
up to 24	8	42
4-12	6	32
less than 4	2	11

Table 7 Services Available in the Central Facility (n=19)
(percent of agencies reporting)

	n	%
Food service	12	63
Medical care	6	32
Access to counsel	15	79
Telephone	15	79
Search	19	100
Routine strip search	3	16
Early release mechanisms (summons, citations, etc.)	6	32

Table 8 Type of Training for Facility Staff (n=19)

	n	%
Law enforcement (formal)	7	37
Corrections (formal)	7	37
OJT only	1	5
None	4	21

Table 9 Administrative Areas of the Central Facility
(percent of agencies reporting)

	n	%
Weapons introduction and control policies in effect	15	79
Policies in effect regarding staff use of deadly force	11	58
Hold detainees overnight	15	79
holding juveniles	14	74
holding mentally ill	16	84
holding public inebriates	7	36
Written policies		
-in effect	11	58
-under development	5	26
-none	3	16

Table 10 Characteristics of Stationhouse Lockups (n=6)
(percentage of agencies reporting)

	n	%
24 hours of operation	5	83
Food service available	1	16
Medical care	0	0
Weapons policy	1	16
Hours held in detention		
24 or more	1	17
less than 4	5	83
Accredited by the state	2	23

APPENDIX A

RESOURCES

2. American Correctional Association
   4321 Hartwick Road, Suite L-208
   College Park, MD 20770

3. Institute for Economic & Policy Studies, Inc.
   1220 King Street
   Alexandria, VA 22314

4. National Association of Counties
   1735 New York Avenue, N.W.
   Washington, D.C. 20005

5. National Association of Criminal
   Justice Planners
   1012 14th Street, N.W.,
   Washington, D.C. 20005

6. National Center for State Courts
   1600 Tullie Circle, N.W., Suite 119
   Atlanta, GA 30329

7. National Coalition for Jail Reform
   1333 New Hampshire Ave., Suite 1220
   Washington, D.C. 20036

8. National Commission on the Accreditation
   of Law Enforcement Agencies
   8803 Sudley Rd., Suite 205
   Manassas, VA 22110

9. National Institute of Corrections
   320 First Street, N.W.
   Washington, D.C. 20534

10. National Jail Center
    1790 30th Street, Suite 140
    Boulder, CO

11. National Sheriff's Association
    1250 Connecticut Ave., Suite 320
    Washington, D.C. 20036

12. Montgomery County MH/MR Emergency
    Services, Inc.
    Building 16, Standbridge and Slerigere Street
    Norristown, PA 19107

13. Police Executive Research Fourm
    1909 K Street, N.W., Suite 400
    Washington, D.C. 20006

APPENDIX A
RESOURCES

Medical Publications

Mental Care in Jails: Legal Obligations to the Pre-Trial Detainee

The Recognition of Jail Inmates with Mental Illness: Their Special Problems and Needs for Care

Standards for Health Services in Jails

nese publications are available through:

The Clearinghouse
American Medical Association
Programs to Improve Medical Care and Health Services
in Correctional Institutions
535 North Dearborn Street
Chicago, Ill 60610

Legal Publications

A Model Code of Pre-Arraignment Procedure. Washington, D.C.: The American Justice Institute, 1975.

ABA Standards Regarding the Legal Status of Prisoners. Washington, D.C.: American Bar Association, 1980.

Federal Standards for Corrections (Draft). Washington, D.C.: U.S. Department of Justice, 1978.

Manual of Standards for Adult Local Detention Facilities. Rockville, MD.: American Correctional Association, Commission on Accreditation for Corrections, 1977.

Standards on Pre-Trial Release. Chicago, IL.: National District Attorneys Association, 1978.

Organizations

lational and local organizations that can assist in addressing issues .rising from temporary detention:

1. American Bar Association
   18th Street, N.W.
   Washington, D.C. 20006

APPENDIX B

MODEL STANDARDS FOR THE OPERATION OF TEMPORARY DETENTION FACILITIES

SOURCE: NATIONAL COMMISSION ON
THE ACCREDITATION OF LAW ENFORCEMENT AGENCIES

26.1 Administration, Organization, and Management

The agency has a written directive that governs the operation and maintainance of the holding facility.

26.1.3 A written directive designates one person as responsible for operations of the holding facility.

26.3 Training and Staff Development

26.3.1 A written directive requires that detention facility personnel receive training consistent with their assignment.

26.3.2 Holding facility personnel are trained in methods of applying physical force.

26.4 Management Information Systems and Arrestee Records

26.4.1 An arrestee population accounting system is maintained.

26.4.2 A written diretive requires reporting all incidents that threaten the facility or any person therein.

26.4.3 An intake form is completed for every person booked into the facility.

26.4.5 A written directive governs maintenance of arrestee records.

26.4.6 The agency has procedures for safeguarding arrestee records from unauthorized disclosure.

26.5 Physical Plant

Holding facilities provide the following minimum comfort for each person occupying the facility:

- o Lighting of at leat 20 footcandles.
- o Circulation of at least 10 cubic feet per minute of fresh or purified air.
- o Toilets and wash basins with hot and cold running water, and drinking water.

26.5.2 Cells designed for single occupancy house only one arrestee.

26.5.3 Cells designed for single occupancy have at a minimim

- o 50 square feet of floor space.
- o Toilet failities.
- o Wash basin with hot and cold running water.
- o A bed.

26.5.4 There is a reception/release area located inside the security perimeter but outside arrestee living quarters.

26.5.5 A written directive prescribes methods for handling and detaining persons under the influence of alcohol or narcotics or who are violent or self-destructive.

26.5.6 A written directive requires that persons under the influence of alcohol or narcotics or who are violent or self-destructive are segregated.

26.5.7 Space is provided for secure storage of arrestee's personal property.

26.5.8 There is a designated emergency exit facilitating evacuation of persons from the facility to hazard-free areas.

26.5.9 The living and activity areas of the faility are equipped with floor drains beyond access of arrestee.

26.5.10 The living and activity areas of the facility are equipped with emergency water shut-off beyond access of arrestee.

26.6 Safety and Sanitation

26.6.1 A written directive prescribes fire prevention pratices and procedures for the facility.

26.6.2 Fire suppression equipment is located in areas approved in writing by state/local fire officials.

26.6.3 A written directive requires testing of fire suppression equipment at least quarterly.

26.6.4 A written directive requires daily inspection of fire suppression equipment.

26.6.5 There is a written emergency evacuation plan for the facility.

26.6.6 The facility has an automatic fire alarm and heat and smoke detection system that is approved in writing by state/local fire officials.

26.6.7 A written directive requires daily testing of the facility's automatic fire detection devises and alarm system.

26.6.8 A written directive specifies procedures for control of vermin and pests.

26.6.9 A written directive provides for issuance of clean bedding, linen, and towels to arrestees held overnight.

26.6.10 A written directive requires daily sanitation inspections of all facility areas.

26.7 Medical and Health Care Services

26.7.1 Emergency health care services are available to arrestees.

26.7.2 A written directive concerning medical care for arrestees has been approved by a licensed physician.

26.7.3 Medical treatment by personnel other than a licensed physican is performed pursuant to written standing or direct orders from a licensed physician.

26.7.4 First aid kit(s) containing items approved by a licensed physician are available in all facilities.

26.7.5 A written directive requires weekly inspection of first aid equipment.

26.7.6 A written directive defines "receiving screening" as including an inquiry into:

- o Current health assessment of the arrestee, including those specific to women.
- o Medications taken by arrestee.
- o Behavioral observation, including state of consciousness and mental status.
- o Notation of body deformities, trauma, markings, bruises, lesions, jaundice, ease of movement, etc.

26.6.7 Receiving screening is performed on arrestees upon admission to the holding faility and before transfer to another holding facility.

26.6.8 Medical information acquired from arrestees during receiving screening is recorded.

26.6.9 At time of admission to the facility, arrestees are informed in writing of procedures for gaining access to medical services.

26.7.10 A written directive governs management of pharamaceuticals within the facility.

26.7.11 Events pertinent to an arrestee's medical treatment are recorded.

26.6.12 A written directive governs accessibility to information contained in an arrestee's medical record.

26.8 Food Services

26.8.1 A written directive allows for special diets when prescribed by a licensed physician.

26.8.2 A written directive requires that records are maintained of all meals served.

26.8.3 Three meals are provided at regular mean times during each 24-hour period.

26.8.4 A written directive precludes withholding regularly scheduled meals as a disciplinary measure.

26.8.5 A written directive requires that all meals are served under supervision of staff members.

26.9 Security and Control

26.9.1 A written directive requires a count of arrestee population at least once per shift.

26.9.2 A written directive specifies when holding facility doors are to be secured.

26.9.3 A written directive governs conditions under which an officer enters an occupied cell.

26.9.4 There is an audio communication system between a designed control point and the arrestee living areas.

26.9.6 A written directive requires a security inspection of the holding facility at least weekly.

26.9.7 A written directive governs searches of facilities and arrestees for contraband.

26.9.8 A written directive governs the level of authority required for access to and for use of security devices.

26.9.9 A written directive prohibits weapons within the security perimeter of the holding facility.

26.9.10 A written directive governs control and use of keys.

26.9.11 A written directive governs control of tools and culinary equipment.

26.9.12 A written directive prescribes procedures to be followed in the event of an escape.

26.9.13 A written directive prescribes space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the holding facility.

26.10 Supervision of Arrestees

26.10.1 A written directive requires 24-hour supervision of arrestees by agency staff.

26.10.2 A written directive requires that each arrestee is personally observed by agency staff at least every 30-minutes.

26.10.3 A written directive specifies that audio or visual electronic surveillance equipment is not used to invade the personal privacy of arrestees.

26.10.4 A written directive specifies procedures for supervision of arrestees of sex opposite that of the supervising staff member.

26.10.5 A written directive prohibits arrestees from supervising or assuming any authority over other arrestees.

26.11 Management of Special Arrestees

26.11.1 A written directive designates circumstances under which an arrestee can be placed in administrative segregation.

26.11.2 A written directive requires that arrestees housed in administrative segregation are afforded living conditions and privileges the same as those available to the general arrestee population.

26.11.3 A written diretive requires the ranking staff member on duty to review administrative segregation decisions within the hour such decisions are made.

26.11.4 A written directive governs the process used to release arrestees from administrative segregation to general arrestee population.

26.11.5 A written directive requires a record of administrative segregation be maintained.

26.12 Arrestee Rights

26.12.1 A written directive sets forth procedures assuring arrestee's access to the courts.

26.12.2 A written directive prescribes procedures to be used to ensure the right of arrestees to have confidential access to attorneys.

26.12.3 A written directive sets forth rules of arrestee conduct.

26.12.4 A written directive stipulates that arrestees are allowed to make at least two local or collect long distance telephone calls.

26.13 Mail and Visiting

26.13.1 A written directive stipulates that arrestees be permitted to send and receive mail.

26.13.2 A written directive governs inspection of arrestee mail to intercept cash, checks, money orders, and contraband.

26.13.3 A written directive prescribes procedures for registering visitors to the facility.

26.13.4 A written directive prescribes procedures for searching visitors.

26.14 Reception, Orientation, Release, and Property Control

26.14.1 Positive identification is made of the person presenting the arrestee for detention, including verification of the person's authority to make the commitment.

26.14.2 A written directive requires that an arrestee's opportunity to make bail is not impeded.

26.14.3 A written directive requires a written, itemized inventory be made of all personal property taken from an arrestee.

26.14.4 A written directive requires positive identification be made before an arrestee is released.

26.14.5 A written directive governs the return of arrestee's personal property upon release.

26.15 Classification

26.15.1 Juveniles are provided living quarters separate from adult arrestees.

26.15.2 Female arrestees are provided quarters separate from male arrestees.

APPENDIX C

REVIEW OF CASE LAW

PRE-ARRAIGNMENT DETENTION

EXEQUIEL R. SEVILLA, JR. PhD., LLB

I. INTRODUCTION

This paper will cover statutory and case law on pre-arraignment detention. Pre-arraignment detention is the period between the moment a person is arrested and the time such person is arraigned before a magistrate. It does not cover the time that person may spend in detention from the preliminary hearing to the start of the trial. In this paper, I will review the permissible duration of detention, conditions in the detention facility, custodial interrogation proceedings, and the remedies available to those harmed by or during detention.

II. DETENTION DEFINED

Pre-arraignment detention commences with an arrest. Arrest must be based on probable cause, i.e., the reasonable belief by the arresting person that the individual arrested has probably committed a crime. Arrests may not be made either on suspicion or for investigative purposes. Arrest implies the deprivation of a person's freedom of action in a significant way. If a person is not deprived of all freedom to walk away from a situation, he is not arrested and not in custody. In Beckwith v. U.S., 96 S Ct. 1612 (1976), Internal Revenue Service agents visited the defendant at his house at 8:00 a.m. and interviewed him for three hours without giving him the Miranda warnings.

The court held that defendant was not in custody and had been free at any time to discontinue the interview, and therefore, the Miranda warnings were not required. In Orozco v. Texas, 394 U.S. 324 (1960), the police entered the boarding house where the defendant was staying at 4:00 a.m. and questioned him for several hours in his bedroom. At trial, the police testified that the defendant was not free to leave during the interview. The court held that Orozco was in custody and since Miranda warnings had not been given, his admissions were not admissable as evidence.

Even though a person was in a police facility, he was not "in custody" if his freedom was not curtailed. In Oregon v. Mathiason, 97 S. Ct. 711 (1977), the police, during a burglary investigation, asked a suspect to come to the station for a discussion. The suspect was told he was not under arrest, but was believed to have been involved in the burglary, and (falsely) that the police found his fingerprints on the scene. The suspect admitted the crime, then was given Miranda warnings, after which he made a taped confession and was allowed to go home. The court, in a per curiam holding without oral argument, held that the suspect was not in custody when he made his initial admission, and had thus not been entitled to the Miranda warnings. In United States v. Mendenhall, 100 S. Ct. 1870 (2980), plain clothes Drug Enforcement Administration agents approached a suspect in an airport concourse and requested her to identify herself. The agents had noticed that the suspect fit a drug-courier "profile." Mendenhall's driver's license and airline ticket were issued in a different name and the

agent's questioned her briefly on the discrepancy. After returning the ticket and license, one of the agents identified himself as a federal narcotics agent and asked Mendenhall to accompany him to the DEA office in the terminal, she agreed. At the office, she was asked if she would undergo a strip search and was informed of her right to refuse. She consented. The agents called a policewoman to execute the search. The policewoman once again informed Mendenhall that she could refuse, and Mendenhall again concented to the search. The court held, despite one agent's testimony that he would not have allowed Mendenhall to leave if she had tried, that Mendenhall had not been in custody until after the discovery of the heroin, in that she had voluntarily gone to the DEA office and had agreed to be searched.

The Supreme court appears to use an ad hoc approach to determine when a person is in custody. The Fifth Circuit has suggested four criteria: the presence of probable cause to arrest, the focus of the investigation, the subjective intent of the police at the scene and the subjective belief of the suspect regarding his freedom. In United States v. Henry, 604 F .2nd, 908 (1979), this circuit held that the suspects was not in custody during the first interview with a Customs Inspector because immigration investigation had not yet focussed on him, there was neither probable cause to arrest nor subjective intent to hold him in custody and there was no reason for him to believe his freedom had been significantly curtailed. In United States v. Marks, 603 F .2nd, 582 (1979), the suspect was deemed not to have been in custody, although probable cause for arrest existed and the investigation had focussed on him, because he had no reason to believe federal

agents were present. At least three other circuits employ an objective test to evaluate the reasonableness of a suspect's belief concerning his freedom at the time of police contact. In Borodine v. Douzanis, 592 F 2nd 1202 (1st Cir. 1979), a suspect questioned on the scene of the crime for ten minutes was considered not to have been in custody. In United States v. Statley, 597 F .2nd 866, (4th Cir. 1979), although the suspect felt that he was questioned in a "coercive environment," he was not under custody because the police told him he was free to go after the interrogation and did not restrain his departure. In United States v. Scharf, 608 F. 2nd 323 (9th Cir. 1979), a suspect who had been questioned was surrounded by police officers and there interrogated by an FBI agent. This was held to be custodial.

III. STATUTORY LAW

A. Duration of Pre-arraignment Detention. The Federal Rules of Criminal Procedure and a majority of state statutes require the police to present an arrested person before the nearest available magistrate or other judicial officer "without unnecessary delay" or "immediately." Eleven states specify a maximum permissible time within which the arrested person must be brought before a magistrate. These times range fron "overnight" (Alaska, Arizona, Delaware, New Hampshire, Florida), 36-hours (Minnesota), 48-hours (Georgia, Hawaii), to 72-hours (Louisiana). The District of Columbia requires questioning to terminate three-hours after arrest and not to restart until after presentation of the arrested person to a magistrate. For minor offenses, the

magistrate proceeds with trial. For offenses not triable by him, the magistrate must inform the arrested person of the complaint, of the Miranda warnings, of the right to a preliminary hearing and of the general circumstances under which he may secure a pre-trial release.

Detainee Rights. To determine what rights are given by statue to detainees, the rules of criminal procedure of ten states, chosen at random, were thoroughly reviewed. The ten states were: Arizona, California, Iowa, Louisiana, Massahusetts, Montana, North Carolina, Ohio, Rhode Island and Tennessee.

Generally, detainees had rights to counsel, to make telephone calls and to receive visits. Details of these rights varied from state to state.

Arizona rules of criminal procedure 6.1 spells out the right to counsel in detail. The detainee has a right to counsel in any criminal proceeding except those concerned with petty offenses with no prospects of imprisonment. In case of indigency, counsel is to be appointed by the court. All waivers of this right are to be checked by the court to insure that they are made knowingly, intelligently and voluntarily. Court may then still appoint counsel to advise the detainee at any stage of the proceedings.

Other states imply the right to counsel. California Penal Code Section 851.5 allows the detainee to make a telephone call to his attorney of choice, public defender or assigned attorney. Section 825 authorizes the attorney to visit the detainee. Louisiana Code of

Criminal Procedure, Article 230.1, requires counsel to be appointed within 72-hours, not counting weekends and holidays. The same article also states, however, that failure to comply with this requirement "shall have no effect whatever upon the validity of proceedings thereafter against the defendant."

Iowa Code, Section 804.20 similarly allows calls to, and visits from the detainee's attorney. Iowa does specify that the visits are to be private and confidential. North Carolina General Statutes, Section 15-A-501, require the police to advise the detainee of his right to communicate with counsel. Tennessee Code, Section 40-1101 requires the magistrate to inform the detainee of his right to counsel.

The other states explicitly provide the detainee with a right to counsel, but not in as much detail as Arizona does; Massachusetts general law, Section 37A; Montata Revised Codes, Section 95-1101, and Ohio Revised Code, Section 2935.20 both cover the right to counsel. Rhode Island General Laws, Section 12-15-1-11, established an office of the public defender.

Telephone calls are not a statutory right in all states, and the procedures for these calls also vary. California Penal Code, Section 851.5 allows the detainee to make two completed telephone calls no later than three hours after arrest. The calls are to be free if within the local calling area. A sign, posted in a conspicuous place, must spell out this right, and must inform the detainee that his call to an attorney may not be monitored, eavesdropped upon or recorded. Iowa

code, Section 804.20 allows a reasonable number of calls, but these have to be made in the presence of the person having custody. Louisiana, North Carolina and Ohio statutues mentioned a general right to use a telephone to communicate with friends, relatives or counsel. Massachusetts specifies that the detainee is to pay for the call, and that it is permitted during the first hour after the detainee has been informed of his rights. Tennessee specifies that the detainee cannot be booked until he has successfully completed a call to an attorney, relative, minister, or any person without undue delay (defined as onehour). The other states, Arizona, Montana and Rhode Island, do not have statutes on telephone calls. Calls may, however, be allowed as a matter of standard procedure. Other rights were different from state to state, specifically:

- Arizona Revised Statutes, Section 13-3902, forbids oppressive measures of any kind to secure confessions or other evidence of guilt from arrested persons.
- California Penal Code, Section 825.5, allows visits from physicians or surgeons, including psychiatrists.
- Massachusetts General Law, Section 33, requires the arrestee to be examined immediately upon arrival at jail, police station, or lockup for bruises, cuts and and other injuries. Any inquiries are to be reported in writing to the chief of police. This section specifically states that it is not to be construed as authorization for a strip search.
- Ohio Revised Code, Section 2935.14, prevents the removal of the detainee from the site of initial detention until his/her attorney has had a reasonable opportunity for a private conference.

Of the above rights, the most important is the right to counsel.

IV. CASE LAW

A. Duration of Detention. As noted above, most states require the police to present the accused to a magistrate "without unnecessary delay" or "promotly" after arrest. Under the holding of Gerstein v. Pugh, 420 U.S. (1975), this procedure is not adversary, may be considered hearsay and written testimony, and does not require that the accused have counsel. It is of interest that four justices saw fit to concur in the requirement for a hearing but to dissent on the specification that the procedure be non-adversarial. The permissible length of time between arrest and appearance before a magistrate has varied from case to case and from jurisdiction to jurisdiction. Twenty-four hours has been held to be too long, and four days not overly long. The test seems to be the reasonableness of the delay. When a magistrate has been unavailable over a weekend, for example, the delay has been held justified. Where the delay was caused by the need to interrogate the suspect, courts have held the delay in violation of statutes.

B. Interrogation. the leading case in custodial interrogation in still Miranda v. Arizona, 384, U.S. 436 (1966), which held that "...when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privileged against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of

the right will be scrupulusly honored, the following measures are required. [The suspect] must be warned prior to any questioning:

(1) that he has a right to remain silent;

(2) that anything he says can be held against him in a court of law;

(3) that he has a right to the presence of an attorney; and

(4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires."

The suspect may waive his right to remain silent and to have a lawyer. The prosecution bears the burden of demonstrating that the waiver was an intelligent and knowing one. Silence may not be taken as a waiver. At least one court, however, has held that a suspect's nod or shrug after hearing the warnings constituted as a waiver. Mullaney v. State, 246 A. 2nd (Md. app. 1968). The suspect may change his mind at any time after granting a waiver. In that case, interrogation must cease until a lawyer is obtained and present. Absent actual retention of private counsel or exact knowledge that the suspect can afford private counsel, the suspect is presume indigent and the police must obtain counsel.

Any statement obtained in violation of Miranda is inadmissible, regardless of whether other factors indicate that the statement would meet traditional "voluntariness" criteria. Such a statement may, however, be introduced to impeach a defendant's testimony. In Harris v. New York, 401 U.S. 222 (1971), the defendant was indicted on two

counts of selling heroin. The defendant testified at trial and denied making one of the sales. The prosecution then read a statement, obtained in violation of Miranda, in which the defendant had admitted making two sales. The court held that such use of a statement made without the required warnings was permissible for impeachment. "The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances." The use of such statements for impeachment was again allowed in Oregon v. Hass, 420 U.S. 724 (1975). When, however, such a statement was the product of coercion or was involuntary for some other reason, it may not be used for impeachment, In Mincey v. Arizona, 437 U.S. 385 (1978), the defendant was interrogated by police while he was in the intensive care unit of a hospital, with bullet wounds, partial paralysis, tubes in his throat and nose, a catheter in his bladder, and various drugs in his system. He asked repeatedly that the questioning stop until he could get a lawyer, but nonetheless answered questions by writing on pieces of paper, all the while claiming that his pain was "unbearable." The answers themselves bore significant signs of confusion. The court held that the confession was not the product of "a rational intellect and a free will" and that, therefore, it was involuntary and inadmissible even for purposes of impeachment.

Courts are divided in determining what constitutes interrogation for Miranda purposes. Unsolicited or spontaneous statements are generally exempt from Miranda requirements. The use of psychological

techniques to elicit confessions or admission has led to differing holdings. In United States v. Jordan, 570 F. 2nd 635 (6th Cir. 1978), agents showed the suspects a copy of the arrest warrant for him and his pregnant common law wife and stated that they intended to arrest her. The suspect then said that the drugs discovered in the house were his and not his wife's. The agents' statements were held to be neither coercive nor interrogatory and the suspect's admission was further held to be unsolicited and admissable. In Rhode Island v. Innis, 100 Ct. 1682 (1980), police arrested the defendant for armed robbery of a taxi driver. After the defendant asserted his right to counsel, the police placed him in a police car for transportation to the station. On the way, he overheard officers express concern among themselves for the safety of handicapped children playing in the area where police believed the sawed-off shotgun that had been hidden was used in the robbery. The defendant interrupted the officers and directed them to the location of the weapon. He was subsequently indicted for the kidnapping, robbery, and murder of another taxi driver. The Rhode Island Supreme Court set aside his conviction and held that the police had "interrogated" him in violation of Miranda. The United States Supreme Court reversed and held the defendant had not been "interrogated" because that conversation among police officers did not constitute "words or actions on the part of the police...that the police should know that they are reasonably likely to elicit an incriminating response from the suspect." The remarkable factual similarity between the Innis and Brewer v. Williams, 430 U.S. 387 (1977), creates

ambiguity. Brewer involved the abduction and murder of a ten-year old girl in Des Moines, Iowa. A warrant for the arrest of Williams, an escapee from a mental hospital, was issued. Williams surrendered to the police at Davenport, Iowa, 160 miles from Des Moines. The Davenport police read him the Miranda warnings. He was advised by local counsel not to say anything until he was returned to Des Moines and was with his lawyer. Two Des Moines police officers went to Davenport and picked up Williams. On the return trip one police officer, knowing that the defendant was quite religious, told him to think about the prospect of snow covering the victim's body and the parents' right to give their murdered little girl a Christian burial. The defendant responded by leading police to the body. Williams' statement and the fact that he led the police to the body were admitted as evidence during the trial over his attorney's objections that the police had "interrogated" his client in violation of the Sixth Amendment Right to Counsel. The trial court ruled that the defendant had waived that right by volunteering the information. The Supreme Court, in a habeas-corpus hearing, held that here had been no waiver, as shown by Williams having contacted two lawyers, one at Davenport and the other at Des Moines, and by the fact that he had promised to tell the "whole story" after consulting with his lawyer at Des Moines. Brewer was decided as a Sixth Amendment Right-to-Counsel case, while Innis was a Fifth Amendment self-incrimination decision. The Innis court carefully pointed out this distinction and that the concepts of interrogation for purposes of the two amendments were different. The Fifth Amendment policy

behind Miranda is to mitigate the coercive character of custodial interrogation, the Sixth Amendment policy behind Brewer does not require any element of coercion, simply the absence of counsel after the defendant has requested one be present. The two standards, however, are remarkably similar. Innis' conduct that "the police should know is reasonably likely to elicit an incriminating response" sounds very much like Brewer's conduct through which police "deliberately elicit" incriminating responses. Hopefully the court will soon decide a case that will resolve the difference.

C. Right to Counsel for Other Procedures. In addition to interrogation, detainees have the right to have counsel present only at a adversarial events. Although the Supreme Court had held in United States v. Wade, 388 U.S. 218 (1967), and in Gilbert v. California, 388 U.S. 263 (1967), that post-idictment line ups without the presence of defense counsel were denials of the accused Sixth Amendment rights, the court refused to extend the right to counsel to pre-indictment identification procedures in Kirby v. Illinois, 406 U.S. 300 682 (1972). In United States v. Ash, 413 U.S. 300 (1973), the court held that there was no right to counsel during identification procedures based on photographs. In Vite v. Jones, 100 S. Ct. 1254, a plurality of the court held that a prisoner has a right to counsel in a hearing before an involuntary transfer to a mental insitution.

D. Conditions of Detention. The leading case on the candidates of detention for persons not yet tried or found guilty is Bell v. Wolfish, 441 U.S. 520 (1979). Although it covers conditions

of confinement for persons who have been arraigned but have not yet been tried, the reasoning behind the holding is applicable to persons who have been arrested but have yet to appear before a magistrate.

The class action in Wolfish was brought by inmates at the Metropolitan Correction center to challenge the Constitutionality of numerous conditions and practices of confinement in the center. The District Court, on various constitutional grounds, enjoined, among other things the practice of placing two inmates in rooms designed for single occupancy; the enforcement of the "publisher-only" rule which prohibited inmates from receiving hard cover books except those mailed directly from publishers, book clubs or book stores; the prohibition against inmates' receipt of packages of food and personal items; the practice of body-cavity searches following visits; and the requirement that inmates remain outside their rooms during routine inspections. The Court of Appeals affirmed these rulings. The Supreme Court reversed and held that the enjoined procedures did not deprive pretrial detainees of their liberty without due process of law in contravention of the Fifth Amendement. In evaluating the constitutionality of conditions of pre-trial detention that involve only the protection against deprivation of liberty without due process of law, the proper question is whether the conditions amount to punishment of the detainees. Absent a showing of an expressed intent to punish, a particular condition, reasonably related to a legitmate nonpunitive government objective, does not amount to punishment. Conversely, if a condition is arbitrary or purposeless, a court may infer that the purpose is

unconstitutional punishment. The objectives of ensuring the detainees' presence at trial and the effective management of the detention facility are valid objectives that may justify the imposition of conditions and thus dispel any inference that such conditions are intended as punishment. The conditions, restrictions and practices do not constitute "punishment," but are reasonable responses by officials to legitimate security concerns and, in any event, are of only limited duration so far as the pre-trial detainees are concerned.

Citing Wolfish as precedent, the Third Circuit, in Inmates of the Allegheny County Jail v. Pierce, 612 F .2nd 754 (3rd Cir. 1979), and the seventh court in Jordan v. Wolke, 615 F .2nd 749 (7th Cir. 1980), held that the interest of prison officials in controlling contraband justifies the banning of contact visits between pretrial detainees and outsiders.

V. REMEDIES

A. Exclusionary Rule. The exclusionary rule prohibits the admission into evidence of any statements, admission and/or confessions obtained during the pre-arraignment detention without the Miranda requirements. This rule is intented to alleviate the coercive character of custodial interrogation.

Torts Actions. An individual who has been arrested without probable case, or improperly detained without arraignment, or physically abused during detention may bring civil action in tort for false

imprisonment, or for assault and battery. Such actions may run up against the defense or immunity. Public officers acting in the performance of their duties have traditionally been immunized from tort actions. This policy is based on the belief that public servants would be unduly hampered and intiminated in the discharge of their duties, and an impossible burden would fall upon governmental agencies if the immunity to private liability were not extended in some degree to those who act improperly or who exceed their authority. Absolute immunity exists for judges, members of state and national legislatures, municipal councils and to the highest executive officers of the deferral and state governments so long as there is no clear abuse of discretion. For lower officers, courts distinguish between "discretionary" (quasi-judicial) acts which require personal delibertion, decision and judgment and "ministerial" acts which amount to obedience to orders or the performance of a duty in which the officer has no personal choice. Immunity exists for "discretionary" acts given the present of good faith on the part of the actor. "Ministerial" acts are done improperly at the officer's peril regardless of the good faith. W. Prosser, Handbook of the Law of Torts, 987-992 (Fourth ed., 1971). The doctrine of immunity for federal, state and local governments has, however, been eroded. With the passage of the Federal Torts Claims Act in 1946 and subsequent similar state statutes thereafter, more and more governmental agencies may be liable for tortous acts under certain conditions. One must check specific statutes for details in each case. W. Prosser, J. Wade and v. Schwartz, Cases and Matrials on Torts, 655-673 (Sixth ed., 1976).

C. Civil Rights Act. Title 42, section 1983 of the United States Code has been used to sue individuals who are immune from torts actions for liability in conncection with detention. It reads:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected, any citizen of the United States, or other persons within the jurisdiction, thereof, to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress."

Interpretation of this statute has varied between circuits. Lack of knowledge by officials has been upheld as a defense. In Bennett v. Campbell, 564 G .2nd 329 (9th Cir. 1977), plantiff was arrested by county police on a federal warrant and held for ten days before federal marshals picked him up and presented him to a magistrate. Defendants' motions for summary judgment on grounds that they had not been notified of the arrest for ten days was granted by the District Court and affirmed by the Circuit Court. In Dominques v. Beame, 603 F .2nd 337 (2nd Cir. 1979), plaintiff sued the mayor, commissior of police, the police department and named police officers of New York City. She had been arrested for disorderly conduct (soliciting for prostitution), held overnight, and released without being charged. The court dismissed the mayor and the commissioner without liability in that they knew nothing of the incident, and also

exonerated the department and the officers because they had acted in good faith. Acting reasonably and in good faith also protected the defendants in Wood v. Woracmer, 618 F. 2nd 1225 (7th Cir. 1980). Plaintiff was in a Milwaukee, Wisconsin park when violence erupted during an anti-curfew demonstration. He was assaulted and injured, taken into custody, confined for three hours, then released without charges and taken to a hospital for treatment. He sued the chief of police, the members of the police commission, two jailers, and unknown police officers. The chief of police and the commissioners moved for and received summary judgment on ignorance of the incident. The District Court held the jailer's liable for violation of the plaintiff's rights under the Fourth (no confinement without probable cause), Eight (cruel and unusual punishment in lack of prompt medical treatment) and Fourteen (confinement without due process) amendments. The Circuit Court reversed the convictions based on the Fourth and Fourteenth Amendments because the jailers has acted reasonably and in good faith in receiving the plaintiff from the arresting officers and had taken positive actions which resulted in his realease when they found he had not been properly booked. The Eighth Amendment conviction was affirmed.

In Reeves v. City of Jackson, Mississippi, 608 F .2nd 244 (5th Cir. 1979), plaintiff had been found slupmed and semiconcious at the steering wheel of a car, transported to jail and placed in a drunk tank for 19-1/2 hours without any intoxication tests being given. He

was released only when two fellow employees located him, signed for him and took him to the hospital, where he was diagnosed as suffering from a massive stroke. The stroke led to early retirement for disability. The District Court granted summary judgment for the city on the grounds that the police had acted reasonably and in good faith. The Circuit Court reversed, stating that the case should have gone to the jury as there was conflicting testimony on the condition of the plaintiff and of his car at the time of arrest and questions as to the actions of the head jailer.

Section 1983 has also been successfully used in cases where people were forced to participate in a lineup, Butcher v. Ricco, 317 F .2nd Supp. 899 (CD.C. Pa 1970), and where a police officer made an arrest without probable cause and used excessive force in making the arrest, Carter v. Carlson, 447 F. 2nd 358 (D.C. Cir. 1970).

Other sections of the U.S. Code have also been used to sue for liability in pre-arraignment detention cases. In Patzig v. O'Neal, 577 F. 2nd 841 (3rd Cir. 1978), Annete Patzig and two lady friends went out on the town in Philadelphia. In the course of the evening, one of the ladies was injured and hospitalized. Patzig and the other lady drove to several hospitals to find their friend. At 4:30 a.m. Patzig was stopped by a police officer for driving the wrong way on a one-way street. She was charged with drunken driving, taken to the police station and then to the Police Administration Building. A breathalyzer test administered at 6:07 a.m. registered .06 which is in the area for jury determination of drunkeness. At 6:15 a.m. a medical examiner

found her sober. She was detained in a cell with two other women pending arraigment. After making a telephone call sometime between 9:00 and 9:40 a.m., she refused to return to her cell and was put in a cell by herself. At 10:00 a.m. she was found dead hanging by her belt. Her parents sued the police commissioner, supervisors, officers, matrons, and the city under USC 133, specifically, for arrest without probable cause, for violation of due process in delaying the arraignmet and for cruel and unusual punishment in the treatment of Annette. The Disctict Court ordered a directed verdict for the defendants. The Circuit Court affirmed on the due process and cruel and unusual punishment charges, but reversed the directed verdict on the lack of probable cause. Confinement of five hours was held reasonable because of the need for testing. Cruel and unusual punishment was held to be unproven, as there was no apparent disregard to the detainee's needs. The question of probable cause was remanded for jury decision.

VI. THE AMERICAN LAW INSTITUTE MODEL CODE

In 1963, the American Law Institute (ALI) started to prepare a Model Code of pre-arraignment procedures. After several studies and tentative drafts, final version was issued in 1976. ALI Model Codes have no legal standing in and of themselves. They are, however, frequently adopted, in whole or in part, by state legislatures. They are frequently cited by courts.

Article 130 of the Model Code presents a model statute governing police actions between the time for arrest and the initial

appearance before a judicial officer. Essentially: All persons arrested, upon being taken to a police station, must be brought before the station officer. That officer must immediately inform the arrestee of the charge and how long he may be held before release on formal charge, give him oral and written Miranda warnings, and assist him in communicating with relatives or friends and with other persons reasonably needed to obtain services of a lawyer, and to meet terms of pre-appearance release.

Information as to the location of the arrestee must be made promptly available at a central location upon single inquiry by relative, friend, or attorney.

The arrested person may be held for a preliminary period, not to exceed two hours, during which an investigation may be conducted to permit a decision to be made as to whether or not to charge the arrestee with a cime.

At the end of this two-hour period, unless further screening is necessary as specified in the next paragraph, the station officer must release the arrestee completely, issue him a citation to appear in court, release the arrestee on his own recognizance, admit him to bail, or bring him before a judicial officer. If arrestee is represented by counsel, he may be continued in custody if he and his counsel both consent.

In a case where there is reasonable cause to believe that the arrestee has committed one or more of a named list of serious crimes and where further screening is necessary, the station officer may hold

CONTINUED

2 OF 3

the arrestee for an additional three hours before taking one of the actions specified in the paragraph above.

Written records are required of the location of the arrestee throughout the period of custody, of the names of all officers who sought information from him, of all officers responsible for his custody who can testify as to the first two items.

Sound recordings are required of all warnings given, of any waivers of counsel and of all interrogations. The sound recordings must include the time the recording started and notification of the arrestee that a recording is being made. Written and sound recordings will be made available to the arrestee and his counsel.

Identification procedures (fingerprinting, photographing) are allowed.

Interrogation is allowed only under Miranda conditions. There will be no abuse, unfair inducement, or use of drugs, hypnosis or polygraph.

Attorney shall have prompt access to arrestee by telephone and in person, and shall be given opportunity for private consultation. In the absence of counsel, a relative or friend shall have access to arrestee.

All waivers must be in writing, countersigned by the station officer and accomplished before end of preliminary (2 hours) or screening (3 hours) period, whichever is later.

Article 230 limits search of the arrestee to a frisk unless there is a strong probability that a more thorough search will disclose things subject to seizure an if it reasonably appears that delay would result in the disappearance or destruction of these items. All searches must be made in private.

Article 310 mandates presentation of the arrestee to a judicial officer at the earliest available time but not later than 24-hours after arrest.

No state has yet adapted the Model Code completely. Courts have, however, been citing sections of the Model Code from the first tentative draft to the final version. The Model Code is, therefore, slowly becoming part of the common law.

BIBLIOGRAPHY

BIBLIOGRAPHY

Law Reviews:

Abel, Richard L. "From the Editor." Law and Society Review. (April 4, 1978). pp. 489-497.

Britton, P. "The Right to Attend Pretrial Criminal Proceeding." Syracuse Law Review. (April 1977) Vol. 28. pp. 857-921.

Cappelletti, Mauro and Garth, Bryant. "Access to Justice." Buffalo Law Review, (February, 1978), Vol. 27, pp. 181-292.

Christianson, S. "Computing Jail Time Credit." Criminal Law Bulletin, (May, 1978), Vol. 14. pp. 437-440.

Daker, W.F. "The Right to Bail a Historical Inquiry." Albany Law Review, (January, 1977), Vol. 42. pp. 33-120.

Dick, Rebecca P. "Prison Reform in the Federal Courts." Buffalo Law Review, (January, 1977), Vol. 27. pp. 99-138.

Fuchs, Ralph F. "Development and Dicersification in Administrative Rule Making." Northwestern University Law Review, (January, 1977), Vol. 72. pp. 83-119.

Inman, P.D. "Bail Pending Appeal in Federal Court." Texas Law Review, (February, 1979), Vol. 57. pp. 275-287.

Langbein, J.H. "The Criminal Trial Before the Lawyers." University of Chicago Law Review, (February, 1978), Vol. 45. pp. 263-316.

Lempert, Richard. "More Tales of Two Courts." Law and Society Review, (January, 1978), Vol. 13. pp. 91-138.

Mather, Lynn M. "Comments on the History of Plea Bargaining." Law and Society Review, (February, 1979), Vol. 13 pp. 281-185.

McGurk, Barry J. and McGurk, Rae E. "Personality Types Among Prisoner Officers." The British Journal of Criminology, (January, 1979), Vol. 19. pp. 31-49.

McSparron J.G. and McNulty, S.L. "Jail Time Credit in New York." Albany Law Review, (April, 1977), Vol. 41. pp. 733-757.

Pope, C.E. "Post Arrest Release Decision." University of Wisconsin Crime Delinquency, 1978, Vol. 151. pp. 35-53.

Quick, A.T. "Attitudinal Aspects of Police Compliance with Procedural Due Process." American Journal of Criminal Law, (1978), Vol. 6 pp. 25-56.

Thaler, Jeff. "Punishing the Innocent." Wisconsin Law Review, (1978), Vol. 2. pp. 442-484.

Warren, C.A.B. "Involuntary Commitment for Mental Disorder." Law Society Review, (April, 1977), Vol. 11. pp. 629-649.

BIBLIOGRAPHY

Books:

Alexander, Franz. The Criminal the Judge and the Public: A Psychological Analysis. New York: The Macmillian Company, 1931.

Bartollas, Clemens. Juvenile Victimization. New York: Sage Publications, 1976.

Bowker, Lee H. Women, Crime, and the Criminal Justice System. New York: Lexington Books, 1978.

Chaneles, Sol. The Open Prison. New York: Dial Press, 1973.

Compton, C.V. Uncle Sam Speaks: Jailers May Be Sent To Jail. Chicago: Dull, Winkinson Publishing Company, 1956.

Fox, Vernon. Introduction to Corrections. New Jersey: Prentice and Hall Inc., 1977.

Giallombardo, Rose. Society of Women. New York: Wiley 1966.

Goldfarb, Ronald L. Jails, The Ultimate Ghetto. New York: Anchor Press, 1978.

Hawkins, Gordon. The Prison; Policy and Practice. Chicago: University of Chicago, 1976.

Kaplan, Gordon. Introductory Cases and Materials. 2nd ed., New York: The Foundation Press, Inc., 1978.

Keller, Oliver. Halfway Houses. Lexington, Mass.: Heath-Lexington Books, 1970.

Klien, Malcomb W. The Juvenile Justice System. Vol. V., New York: Sage Criminal Justice Systems Annuals, Copyright 1976.

Luttrell, Mark. Behind Prison Walls. Chicago: Broadman Press, 1974.

The National Jail Census. Washington, D.C.: Law Enforcement Assistance Administration, February, 1971.

Morris, Norval. The Future of Improsionment. Chicago: University of Chicago Press, 1974.

Pappas, Nick. The Jail: In Operation and Management. Washington: U.S. Bureau of Prisons, 1971.

Queen, Stuart Alfred. The Passing of the County Jail. 4th ed. New York: Thomas Y. Crowell Company, 1930.

Reid, Sue Titus. Crime and Criminology. Oklahoma: University of Tulsa College of Law, Holt. Rhinehart, Winston, 1979.

Tappan, Paul. Crime, Justice, Correction. New York: McGraw-Hill, 1960.

Thomas, Charles. Prison Organization and Inmate Subcultures. 1st ed., Indianapolis: Bobbs-Merrill, 1977.

Viano, Emilio. Criminal Justice Research. Lexington, Mass., D.C. Health and Co., 1975.

Waldron, Ronald J. The Criminal Justice System an Introduction. Boston: Houghton Miffin Co., Copyright 1980.

Ward, David A. Women Prison. Chicago: Aldine Publications Co., 1965.

Williams, Vergi L. Convicts, Codes and Contraband. Cambridge, Mass.: Ballinger Publications Co., (1975, 1974).

BIBLIOGRAPHY

Journals/Articles:

Allen, Gina. "On the Women's Side of the Pen." Humanist, (September 1978), Vol. 38, pp. 28-31.

Alpert, Geoffrey P. "Prisons as Formal Organizations: Compliance Theory in Action." Sociology and Social Research, (October 1, 1978), Vol. 63, pp. 112-130.

Anderson, George M. "Criminal Justice and Women." America, (April 19, 1980), Vol. 142. pp. 330.

Asquith, Steward. "Relevance and Law Participation in Juvenile Justice." British Journal of Law and Society, (April 1, 1977), pp. 61-76.

Bairdon, Philip, and Thomas McEwen. "Preventive Detention: A Matter of Balance." Criminology, (1979-80), Vol. 17

Biggers, Trisha A. "Death by Murder: A Study of Women Murders." Death Education, (Spring 1979), Vol. 3, pp. 1-9.

Bloomberg, A. and T. Wilkens. "Federal Crime Institute." Crime Delinquency, (April 1977), Vol. 23, pp. 435-444.

Bobby, C. "Homicide Hotel." Crawdaddy, (July 1978), pp. 62.

Burgess, D. "Bail or Temporary Release." New Law Journal, (1979), Vol. 129. pp. 235-236.

"Children in Jail." (Microfile). Progressive, (April 1979), pp. 22.

Clear, Todd R., John L. Hewitt, and Robert M. Regoli. "Discretion and the Determinate Sentence: Its Distribution, Control, and Effect on Time Served." Crime and Delinquency, (October 1978), Vol. 24. pp. 428-445.

Cloyd, Jerald W. "Prosecution's Power, Procedural Rights, and Pleading Guilty: The Problem of Coercion in Plea Bargaining Drug Cases." Social Problems, (April 4, 1979), Vol. 26, pp. 452-466.

Coker, John. International Journal of Offender Therapy and Comparative Criminology. (1977), Vol. 21, pp. 114-123.

"Correctional Facilities." American Legion, (October 1980), Vol. 109, pp. 30.

Cottle, Thomas J. "Children In Jail" Crime and Delinquency, (July 3, 1979), Vol. 25, pp. 318-334.

Ewins, David. "The Butler Report." British Journal of Law and Society, (Summer 1976), Vol. 3, pp. 101-109.

Fingarette, Herbert. "Law and Punishment" Center Magazine, (January and February 1980), Vol. 13, pg. 42.

"Fixed Sentences Gain Favor." Time, (December 12, 1977), Vol. 110. pg. 98.

Ford, Maurice. "The Law: Collect $230 and Go to Jail." Atlantic, (July 1980), Vol. 246. pp. 14-17.

Forer, Lois G. "The Law: Excessive Promise and Inadequate Fulfillment." Crime and Delinquency, (April 1, 1978), pp. 197-206.

French, Laurence A. "Bail as a Mechanism of Latent Justice." Free Inquiry in Creative Sociology, (May 1979), Vol. 7, pp. 6-10.

Grabosky, P.N. "Rate of Imprisonment and Psychiatric Hospitalization in the United States." Social Indicators Research, (January 1980), Vol. 7, pp. 63-70

Hartnagel, Timothy F. and Mary E. Gilliam. "Female Prisoners and the Inmate Code." Pacific Sociological Review, (January 1980), Vol. 23, pp. 85-104.

Hentoff, Nat. "Children in Jail: A Million American Kids are Locked Up Without Due Process." Penthouse. (June 1979), Vol. 10, pp. 184-193.

Hepburn, John and Celesta A. Albonetti. "Team Classification in State Correctional Institutions: Its Association with Inmate and Staff Attitude." Criminal Justice and Behavior, (March 1978), Vol. 5, pp. 63-73.

Hicks, Donald A. and Alpert, Geoffrey P. "Patterns of Change and Adoption in Prisons." Social Science Quarterly. (June 1, 1978), Vol. 59, pp. 37-50.

"Humantities Behind Bars." Library Journal, (April 15, 1980), Vol. 105, pg. 896.

Hunter, H. "Some Clinical and Psychiatric Aspects Deriving From a Survey of 1,811 Males in Hospitals for the Mentally Handicapped." Balderton Hospital Neward on Trent, (November 1977), Vol. 131, pp. 468-477.

"Improved Jails Programs." Nation's Cities Weekly. (December 3, 1979), Vol. 2, pg. 9.

Jacobs, James. "What Prison Guards Think: A Profile of the Illinois Force." Crime and Delinquency. (April 2, 1978), Vol. 24, pp. 185-196.

Kaplan, Sacks. "The Case for Coeducation Institutions." Offender Rehabilitation, (1978), Vol. 2, pp. 255-259.

Keerloja. "A Prison Reform with Nowhere to Go." Newsweek. (August 25, 1980), Vol. 96, pp. 8-10.

King, J. (Ed). "Control Without Custody." University of Cambridge Magazine. (1977), pp. 1-177.

Kothman, David. "Doing Time: Days, Months, Years in the Criminal Justice System." International Journal of Comparative Sociology. (March and June 1978), Vol. 19, pp. 130-138.

Lamanna G. "The Personal Freedom of the Accused and Public Order." Guistzia. (1976), Vol. 81, pp. 275-279.

Lizotte, A.J. "Extra-legal Factors in Chicago's Criminal Courts: Testing the Conflict Model of Criminal Justice." Social Problems. (1978), Vol. 25, pp. 564-580.

March, Thomas O. "Women and Violent Behavior: Natural Cycle Suspected as a Link in Crime." Science Digest. (September 1978), Vol. 84, pp. 65.

"The Mentally Abnormal Offender." Justice Peace. (1975), Vol. 139, pp. 631-633.

Miller, M. "Cooperation of Wives in Their Husband's Suicide." Psychologist Reports. (1979), Vol. 44, pp. 39-42.

Moore, Patricia A. "Detention of Persons." National Catholic Reporter. (November 21, 1980), Vol. 17, pp. 5.

Morris, P. and McLeon. "Magistrates: Court Costs in Criminal Cases." Justice Peace, Vol. 142, pp. 5-7.

Motley, Constance Baker. "Anomalies in Prison Sentences." Center Magazine. (January-February 1978), Vol. 11, pp. 17.

Nielsen, E.D. "Community Mental Health Services in Jail." Community Health. (1979) Vol. 13, pp. 27-32.

Oleski, Merritt S. "The Effect of Indefinite Pretrial Incarceration on the Anxiety of an Urban Jail Population." Journal of Clinical Psychology. (October 1977), Vol. 33, pp. 1006-1008.

Pierce, Gerety, Jr. "A French Program to Reduce Pretrial Detention." Crime and Delinquency. (1980) Vol. 26, pg. 22.

Ringer, L.D. and J.C. McCormack. "The Elusive Insanity Defense." American Association, (June 1977), Vol. 63, pp. 1721-1724.

Rosenberg, J. and C. McCall. "Crime: Jailhouse Lawyers." People, (July 1977), Vol. 63, pp. 87-88.

Savage, James E. "Jailhouse Mothering." Psychology Today. (December 1978), Vol. 12. pp, 35-36.

"The Scandalous U.S. Jails." Newsweek. (August 18, 1980), Vol. 96, pp. 77.

Scott, Edward M. "Thereapy with Female Offenders." International Journal of Offender Therapy and Comparative Criminology. (March 3, 1977), pp. 208-220.

"Social Work Service Development Group." Department of Health and Social Security. (1977), pp. 60.

Seligmann, Jean; Lucy Howard, and Pamela Ellis-Simon. "Detention: New Rules, New Goals." Newsweek, (April 2, 1979), Vol. 93, pp. 81.

Van Hattum, W.F.C. "Final Report of the Committee on the Aim and Function of Jails. The Hague. (1977) pp. 167.

Van Veen, T.W. "Means of Coercion." Delik and Deliakwent. (1976) Vol. 6, pp. 441-446.

Walter, M. "Detention Pending Trial and Education and Youth Prisoners." Stafrechsref. (May 1978), Vol. 61, pp. 337-350.

Widon, Cathy Spatz. "An Empirical Classification of Female Offenders." Criminal Justice and Behavior. (March 1978), Vol. 5, pp. 35-52.

Willis, J. "Preliminary Data on the Correctional Personnel Rating Scale." Criminology. (January 1979), Vol. 21, pp. 72-80.

END