

Missouri Core Jail Standards

SECTION 6: CONSTITUTIONAL PROTECTIONS

GOAL: Meet the statutory requirement to hold detainees for the court; maintain the security of the facility; maintain the safety of the public, staff and detainees; and, hold detainees accountable for their actions while in custody, balanced with upholding the detainees' constitutional rights while in the custody of the jail.

EXPECTED PRACTICES

The following constitutional protections should be taken into consideration when developing all jail facility administrative and operational policies, procedures, and practices.

MCJS 6.1: General

The rights of detainees derive from the United States Constitution and federal laws, from state constitutions and laws, and from court cases that interpret each of these sources. A detainee does not automatically lose all of their constitutional rights upon incarceration. When incarcerated for a valid conviction or because the detainee cannot make bond or no bond is given by the court, a detainee defendant is constitutionally deprived of liberty to the extent that the state may confine and subject the detainee to the rules of its jail so long as the conditions of confinement do not otherwise violate the Constitution. Detainees must be furnished with adequate food, clothing, shelter, sanitation, medical care and personal safety.

MCJS 6.2: Background on Constitutional Protections

The First, Fourth, Eighth, and Fourteenth Amendments to the U. S. Constitution (and similar provisions of state constitutions) have been applied by courts in determining the proper limits of confinement and restrictions on detainees' rights.

Generally, the Eighth and Fourteenth Amendment's prohibition against cruel and unusual punishment limits the conditions under which detainees may be confined.

In addition, the First Amendment protects the freedoms of religion, speech, press, and association.

The Fourth Amendment provides protection from unreasonable searches and seizures.

The Fourteenth Amendment guarantees that no state may abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

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MCJS 6.3: Enforcement of Rights under Civil Rights Laws

A detainee whose constitutional or other federal legal rights are violated by a person acting on behalf of the state may seek redress under Section 1983 of the federal Civil Rights Act, 42 U.S.C. 1983.

A detainee may also be able to sue in state court under state tort laws and seek other common-law remedies in state court.

MCJS 6.4: Liability

Any person who has responsibility for the confinement of detainees may face potential liability if the person is found to have violated the detainees' constitutional rights.

The Eleventh Amendment to the U.S. Constitution bars suits for money against the state. However, this provides only limited immunity for state officials because state officials can be sued for damages in their individual capacities.

Sheriffs and jailers may be sued for damages or injunctive relief. Local government officials are entitled to a qualified immunity to the extent that they are not liable for damages unless their conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known. This means that these individuals are presumed to know the existing law on a particular issue and must conform to that law or face liability.

SUB-SECTION 6.5: Specific Rights and Conditions of Confinement

MCJS 6.5.1: Discrimination

Detainees have a constitutional protection under the Equal Protection Clause of the Fourteenth Amendment against discrimination on the basis of race, sex, and creed. Not all disparities will be found to violate the Constitution. Segregation by race violates the Fourteenth Amendment, but officials can, acting in good faith and in certain circumstances, take into account racial tensions in maintaining security, discipline and good order in jails. Generally, as to sexual disparity, there must be basic equality in living conditions, decision making processes affecting the status and activities of confined persons. In addition to the Fourteenth Amendment protections, the U.S. Supreme Court has ruled that detainees are protected by the federal Americans with Disabilities Act against discrimination based on disability.

MCJS 6.5.2: Religion and Religious Practices

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Detainees have certain rights and privileges with regards to religious practices. Detainees must be provided reasonable opportunities to exercise their religious freedom guaranteed under the First Amendment. Detainees cannot be punished for religious beliefs. Jail officials may restrict some practices if, in their informed discretion, they conclude that the religious practice may disrupt jail order or stability or otherwise interfere with the safety and security of the facility.

MCJS 6.5.3: Mail or Correspondence of Detainees

Jail officials can control mail to and from detainees. Generally, rules that regulate mailing privileges of detainees and that are uniformly applied and are necessary to the orderly conduct of the facility do not violate any constitutional rights of detainees. Inspection of non-legal mail is not unconstitutional; however, censorship of non-legal mail may violate the First Amendment rights to freedom of speech and association. Due process requires that if mail is held or censored, a detainee must be notified of the rejection of a letter written by or to the detainee. The author of the letter must be given notice and reasonable opportunity to appeal the decision. Complaints must be referred to a jail official other than the person who originally disapproved the correspondence. In addition, jail officials must be able to justify any censorship rule on the grounds of furthering a particular governmental interest involved. If a rule is so broad as to allow censorship of detainees' criticisms without furthering a governmental interest, the rule is too broad and could be found to violate the Constitution.

"Legal mail" is entitled to more protection. Jail officials must not interfere with a detainees' reasonable correspondence with an attorney. Generally, mail to or from a detainee's attorney, and identified as such, should not be opened for inspection for contraband except in the presence of the detainee. Legal mail must not be delayed any longer than is necessary for handling and sorting. Censorship of legal mail may violate a detainee's right to freedom of petition.

MCJS 6.5.4: Access to Books, Newspapers, Periodicals and Mass Media

The same constitutional principles generally applicable to regulation of detainees' mail apply to the regulation of detainees' access to published materials, newsletters, or newspapers and to the censorship of these materials. Detainees have a constitutional right to receive most publications, and a publication can be rejected only if it poses a threat to the order and security of the facility. Regulations have been found constitutional that prohibit receipt of soft back books unless they are sent directly from publishers, book clubs or bookstores because of the threat of security problems related to the smuggling contraband. Such regulations must be reasonable as to time, place and manner of implementation and be necessary to

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further significant governmental interests. Officials cannot arbitrarily forbid detainees from corresponding with the news media.

MCJS 6.5.5: Access to Courts, Legal Assistance and Legal Materials

Access to the courts is a corollary to the constitutional guarantee of due process. Under the Due Process Clause of the Fourteenth Amendment, detainees have the right of access to the courts in order to challenge their convictions and to seek redress for violations of their constitutional rights. Access means the opportunity to prepare, serve and file necessary legal documents and to send and receive communications concerning these matters to and from judges, courts and lawyers. Cases have held that indigent detainees must be provided with paper and pen to draft legal documents and must be provided with notary services and postage. Legal assistance may be provided by paraprofessionals, legal students, licensed attorneys, and, in the absence of reasonable alternatives, a “jail house lawyer”. If direct legal assistance is not provided, detainees must be offered access to a constitutionally adequate library. Mail to or from a detainee and a court must not be delayed any longer than is necessary for handling and sorting.

MCJS 6.5.6: Visitation

The courts give jail administrators great latitude in restricting detainees' rights to have visitors for reasons of security and related administrative problems, as well as accepted and legitimate policy objectives. It has been held that neither the First Amendment right to freedom of association or the Fourteenth Amendment's guarantee of due process give detainees unregulated visitation rights. Visitation is subject to jail authorities' discretion as long as visitation policies meet legitimate safety and security concerns. It is constitutional to limit visitors. Limitations, such as time, frequency, duration of visits and number of visitors, can be placed on visitation rights. Other reasonable and effective means of communications, such as mail correspondence, must remain open to detainees and jail officials may not show discrimination in visitation rules. Detainees have a right to privileged visits for legal matters and with clergy.

MCJS 6.5.7: Cell Occupancy and Conditions

Jail overcrowding does not necessarily violate the Eighth Amendment's protection against cruel and unusual punishment. It is the effect on jail conditions that overcrowding has that may result in a constitutional violation. If overcrowding causes increased violence or unsanitary and unhealthy conditions or if it affects health and mental health services, educational programs and recreation; the combined impacts may result in a constitutional violation.

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MCJS 6.5.8: Medical Care

Detainees are entitled to adequate medical care under the Constitution, but are not entitled to unqualified access to health care. Health care includes both physical and mental health care. In order to violate constitutional rights, the officials' actions must exhibit deliberate indifference to serious medical needs. Detainees must be able to make their health care needs known to the staff, and the facility must provide access to an adequate system to respond to the detainees' health care needs. The medical staff must be competent to examine detainees and diagnose illnesses, and the facility must provide an adequate system for responding to emergencies. Budgetary constraints and lack of funding will not protect officials against liability for constitutional violations relating to inadequate medical care. Denial of adequate medical care due to overcrowding may violate the Constitution, and detainees' rights to adequate care cannot be made dependent on the detainees' ability to pay.

MCJS 6.5.9: Privacy and Searches

Detainees have few privacy rights under the Constitution since a loss of privacy is inherent during incarceration. Detainees and cells can be searched randomly without warrant or notice. However, detainees cannot be searched solely for harassment and are protected from such harassment by the Eight Amendment's protection against cruel and unusual punishment. A strip search or body cavity search may be constitutional, especially in response to emergency situations, and should only be conducted in accordance with the constitution and prevailing state statute.

MCJS 6.5.10: Rehabilitation, Exercise and Recreation

Detainees must be granted at least some meaningful opportunity for physical exercise. Total or near-total deprivation of out-of-cell exercise may constitute cruel and unusual treatment.

MCJS 6.5.11: Other Rights and Conditions

Detainees have a fundamental constitutional right to marry, but officials may regulate the time and circumstances under which a detainee's marriage ceremony takes place.

Detainees have a First Amendment right to communicate with family and friends and to have reasonable, but not unlimited, access to and use of telephones.

Detainees can be regulated in the matter of their personal appearance.

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Detainees' personal property can be confiscated as long as the detainee is granted due process.

As to diet, detainees must be provided with nutritionally adequate food that is prepared and served under healthful conditions.

Detainees have a constitutional right to be protected from constant threats of violence and sexual assaults.

Mere negligence in protecting a detainee is not sufficient to establish a constitutional violation. In order to recover damages, a detainee must show that there was a pervasive risk of harm from other detainees and that the officials failed to exercise reasonable care to protect the detainee from unreasonable harm.

MCJS 6.6: Pertinent Case Law

- A. **Bell v Wolfish, 441 U.S. 530 (1979)** – Conditions of Confinement
- B. **Block v Rutherford, 468 U.S. 576 (1984)** – Contact Visits
- C. **Brock v Warren County, 713 F. Supp. 238 (E.D. Tenn., 1989)** – Conditions of Confinement
- D. **Bounds v Smith, 430 U.S. 817 (1977)** – Access to Courts, Preparation and Filing Paperwork
- E. **Butler v Dowd, 979 F.2d 661 (8th Cir., 1992)** – Sexual Assault
- F. **City of Canton v Harris, 489 U.S. 378 (1989)** – Medical Attention in Custody
- G. **Farmer v Brennan, 511 U.S. 825 (1994)** – Inmate Safety – Preop Transsexual
- H. **Gates v Collier, 501 F.2d 1291 (5th Cir., 1975)** – Inmate Treatment/Trustees
- I. **Helling v McKinney, 509 U.S. 25 (1993)** – Inmate Health – Exposure to Cigarette Smoke
- J. **Hudson v McMillian, 503 U.S. 1 (1992)** – Excessive Use of Force
- K. **Jordan v Fitzharris, 257 F. Supp. 674 (1966)** – Cruel and Unusual Punishment
- L. **Jordan v Gardner, 986 F.2nd 1521, (9th Cir., 1993, en banc)** – Same Sex Searches
- M. **Lewis v Casey, 518 U.S. 343 (1996)** – Law Libraries and Access to Courts
- N. **Monell v Department of Social Service, 436 U.S. 658 (1978)** – Employee Rights
- O. **Newman v Alabama, 503 F.2d 1320 (5th Cir., 1974)** – Inmate Medical Care
- P. **Pembroke v Wood County, 981 F.2d 225 (5th Cir. 1993)** – Overall Jail Conditions
- Q. **Redman v County of San Diego, 942 F.2d 1435 (9th Cir., 1991)** – Sexual Assault
- R. **Rhodes v Chapman, 452 U.S. 337 (1981)** – Inmate Housing
- S. **Sandin v Conner, 515 U.S. 472 (1995)** – Inmate Grievance Procedures

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- T. **Sinclair v Henderson, 331 F. Sup. 1123 (E.D. La., 1971)** – Jail Conditions
- U. **Stone v San Francisco, 968 F.2d 850 (9th Cir., 1992)** – Jail Population
- V. **Turner v Safley, U.S. 482 U.S.78 (1987)** – Inmate Rights
- W. **Washington v Harper, 494 U.S. 210 (1990)** – Involuntary Medical Treatment
- X. **Wolff v McDonnell, 418 U.S. 539 (1974)** – Legal Mail
- Y. **Yeskey v Commonwealth of Pennsylvania, 524 U.S. 20b (1998)** - ADA

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