



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

REPORT OF PUBLIC HEARING
MARCH 6, 2018
10:00 A.M.

Division Staff Present:

Nadine Pfeiffer, Rule-making Coordinator
Carey Gurlitz, Construction Section
Chris Wood, Construction Section

Others Present:

Kat Bryan, Beaufort County Sheriff
Kim Johnson, Gaston County Sheriff Office
Alan Cloniger, Gaston County Sheriff Office
Todd Davis, Moseley Architects
Matthew Bugaty, NC Sheriff's Association
Donald Taft, New Hanover County Sheriff
Brian Evers, New Hanover County Sheriff
WM, Flint, Moore County
Shannon Garner, Moore County
Cobey Culton, DHHS, Office of Communications
Susan Pollitt, Senior Attorney, Disability Rights NC

1. Purpose of Hearing

This was the public hearing for the proposed readoption of 33 rules for the Jails, Local Confinement Rules and the fiscal note for these rules, specifically 10A NCAC 14J .0101-.0103, .0201, .0203, .0204, .0301-.0303, .0402-.0405, .0501, .0601, .0702, .0705, .0904, .1001, .1002, .1201-.1203, .1207, .1210, .1212-.1215, .1218, .1219, .1225, and .1226.

OFFICE OF THE DIRECTOR

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2. Hearing Summary

The Public Hearing was opened by Nadine Pfeiffer at 10:00 a.m. Attending were representatives from the law enforcement community, business community and an advocacy organization. A total of four oral comments were recorded as follows:

1) Kat Bryan, Jail Administrator from Beaufort County Sheriff's Office stated she took issue with the lack of communication that there has been with the change agents of this with Sheriff's Offices, specifically Jail Administrators. She didn't think there has been enough communication in the field to accurately represent what their needs and concerns are.

Ms. Bryan stated her issue, and the big issue, has been Section .0600 with the supervision rounds. (Rule .14J .0601) The issue is specifically with definition number 56 (Supervision rounds) on what exactly a "round" means. Ms. Bryan said this is causing them to make the change of having to go in the dorm, in the cell block. This is an undue burden to some of their facilities that is not going to increase the level of supervision of their inmates. Ms. Bryan stated her budget year proposal to her commissioners has been at an \$800 to a \$1,000,000 ask to staff this rule change. She has heard from some DHSR representatives that this doesn't necessarily exactly mean "in the dormitories," it depends on the interpretation of the inspector. Ms. Bryan stated that when the rules are read and interpreted as the representative of her county, she is thinking of how they will defend this in court. Her thought is they defend this with the literal interpretation of exactly what this rule proposal says. Ms. Bryan's ask to her commissioners is an additional million dollars just for definition number 56.

2) Kim Johnson, Gaston County Sheriff's Office stated that in the contents of the operations manual (Rule 14J .0203) in number 20, the suicide prevention program, there was no definition of what type of program it was, so is it unclear if it is for staff that they do now, or is it for inmates.

Ms. Johnson stated in Section .0300, Classification of Housing (Rule 14J .0301), when the jail exceeds its total design capacity they will have to relocate inmates to another jail and the problem is most jails are overcrowded. They don't have anywhere to send the inmates to now and they are having a hard time finding a place. She stated that if all the jails are doing this, there is nowhere to put the inmates and that is an issue.

Ms. Johnson stated under new construction for the padded cells (Rule 14J .1207), it says all the things required for a padded cell and that there is observation of the cell by an officer 24 hours a day. She stated that was "a little much" because inmates can be observed by having a camera in the room with a monitor. The rule also requires a door with a view panel large enough for observation of the entire cell, however the inmates will break out the large pane of glass. Ms. Johnson stated they are never going to be able to use it even though it is shatterproof because it shatters on the inside when inmates break it, but if there is a large glass pane the inmates will knock it out every time. Currently they have a padded cell with a small window and they observe the inmate on camera. The rule is requiring the officer to see the inmate at all times in the padded cell therefore it can't be located in the main housing area. Ms. Johnson stated their padded cell is located in booking with people coming in all the time. Most people in a padded cell have no clothes on so if there are people coming into booking they would see a naked person in that padded cell because it has to be where an officer can observe this person at all times. She also stated that a sprinkler head in a padded cell was kind of absurd because the inmate will break that

sprinkler head and then it is out of service again. Currently there are no sprinkler heads in a holding cell and Ms. Johnson did not understand the need for a sprinkler head in a padded cell.

Ms. Johnson stated new jail construction about outdoor exercise and indoor exercise areas (Rule 14J .1210) is requiring both indoor and outdoor exercise. She feels it should say indoor or outdoor exercise because the rule is restricting the jails to what they can and can't do.

Ms. Johnson agrees with Ms. Bryan in that the Jail Administrators did not have a lot of input on these rules. The Jail Administrators met with DHSR 8-10 years ago to talk about it, but haven't met since. She stated they are going to have to ask for more money in their budget to accommodate some of these things.

3) Alan Cloniger, Sheriff, Gaston County, attorney and former Jail Administrator, stated the crux of the problem is what has been said so far. Once these rules came out a couple of months ago, the Sheriffs Association called for a meeting of all the Jail Administrators from across the state to come and talk about it, and over 100 Jail Administrators came to that meeting voicing their concerns. Sheriff Cloniger stated they are the subject matter experts on how to operate a jail; however, they were not consulted prior to this with the exception of maybe 5-8 years ago there was one meeting. Instead of the State looking to them to talk and come across with what can be done and what is reasonable and unreasonable, the State failed to do that. He stated this process should be stopped now and start over with a collaborative effort instead of a dictatorial effort where he was unsure of who made the rules.

Sheriff Cloniger questioned whether State agency staff has ever worked in a jail, ever worked in a prison system, if they understand the process, or if they understand they are making rules the Sheriff has to enforce, but the Sheriff is at the will of the county commissioners because they control the budget. Sheriff Cloniger stated presently his jail is understaffed and for eight years he has asked for staff and has been unsuccessful. He stated that everything in the rule changes he has read is man power intensive and if they can't get their commissioners now to give them dollars, what makes anybody think they will do that. Sheriff Cloniger stated "Do we need it? Yes. Is it important? Yes." There needs to be more consultation between all parties and the commissioners have to understand that if the State makes these rule changes, the commissioners are going to have to give them the personnel to make it work. He stated there has to be some type of compromise, but if there is not, and the rules are changed without the commissioners giving them additional staff, then caught in the middle are his Detention Officers, Deputies and the Sheriffs. Sheriff Cloniger stated he believed in running safe secure jails, his being one of the best run in this state, but jails have issues and there needs to be communication.

Sheriff Cloniger stated currently every jail is supposed to have a classification system that he supports and talks to every sheriff about it; however a lot of Sheriffs Offices don't have an active classification system. The classification system says that if there is an active one, so many beds are supposed to be open so that inmates can be moved around to keep them in the right classification; however, when jails are looked at during inspection it's by the number of beds as whether it is at or over capacity. Sheriff Cloniger it was his opinion for a 10% classification (10% of the beds open), the inspection should not be based on the number beds in the facility but rather, the number of beds they are using. He stated the State is not even looking at their own rules and they want to change the rules. There needs to be more discussion, more talk before haphazardly saying that this is a good idea.

Sheriff Cloniger stated from the mental health side, it is needed; however, what they can afford is up to the commissioners again. He stated the state mental health system is lacking woefully, but everyone wants to put it back on the jails where everyone knows that the jails are the largest mental health providers in the whole state.

Sheriff Cloniger stated this rules process needs to stop, create a task force to work with the State and not against it, and make the correct changes to make our jails even more safe than they are now to adequately provide the safety not only for the inmate but also for the employee that works in there every day.

4) William Flint, Moore County, stated he concurred with everything that had been said thus far and that quite a few of these definitions and some of these rules need clarification.

Mr. Flint questioned for the suicide prevention program in Rule 14J .0203, what it was, who develops it, and do they have to have it and then it becomes a man power issue of who is going to do that, and who was going to supervise it.

Mr. Flint questioned for the relocation of inmates, where they housed them, how were they to transport them, were they going to pay other counties, and were they going to pay the Department of Adult Corrections to house these individuals. He stated if they send them to the prison systems it is not going to be free.

Mr. Flint stated for Rule 14F .0601 (Supervision Rounds), the rule says that if they are making these rounds their officers shall not do other things to interfere with those rounds, which he understands; however a lot of times their Detention Officers have to multi-task and do other things during the supervision rounds, like complete a feeding, but they can still do a supervision round and complete a feeding or do something else.

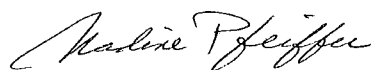
Mr. Flint asked how far should they dive into medical things for Rule 14F .1002. He questioned what a substance abuser was. He stated that he attended a meeting last week where they were diving into the DSM form manual; therefore, he questioned how far will they get into this for the rules.

Mr. Flint concurred with what has already been said. He agreed with having a discussion and dialog if everyone wants to move forward and also find out if we are diving into these definitions, how far does it go, how much training is required, how much man power is required to complete what these rules suggest be completed.

3. Adjournment

These comments will be taken into consideration by the Agency. The hearing was adjourned at 10:19 a.m.

Respectfully Submitted,



Nadine Pfeiffer, Rule-making Coordinator

March 12, 2018

Attachment

Public Hearing Attendance
 Jails, Local Confinement Facilities Rule Readoptions
 10A NCAC 14J
 March 6, 2018 10:00 a.m.

Please print information below:

Name	Representing	Speaking Yes(Y)No(N)
KAT BRYAN	Beaufort County Sheriff	Y Y
Kim Johnson	Cash Co Jo	Y
Alex Cloninger	Cash Co Jo	Y
Todd Davis	Moseley Architects	N
Matthew Bryant	NC Sheriffs' Association	N
DONALD TAFT	NEW HANOVER Co. SHERIFF	N
Brian Eves	NEW HANOVER Co. SHERIFF	N
Wm Hunt	Moore Co	Y Y
Shannon Cannon	Moore Co	N
Cobey Colton	DHHS	N
Susan Jowdy	Disability Rights NC	No