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March 19, 2018

Dr. Mandy K. Cohen, MD, MPH
North Carolina Department of Health & Human Services
101 Blair Drive
Raleigh, NC 27603

Dear Dr. Cohen:

Pursuant to the Revised January 19, 2018 Memorandum from the North Carolina Department of Health and Human Services soliciting public comment to the Proposed Readoption of Jails, Local Confinement Facilities Rules contained in 10A NCAC 14J, I hereby submit on behalf of the North Carolina Sheriffs' Association the attached Memorandum outlining various concerns and objections to the proposed rule changes as written.

If you have any questions or wish to discuss the concerns of the sheriffs in detail, please call me at (919) 459-1052.

Sincerely,

Edmond W. Caldwell, Jr.
Executive Vice President and General Counsel
North Carolina Sheriffs' Association



100% Membership

Post Office Box 20049 • Raleigh, N.C. 27619-0049 • Telephone: (919) SHERIFF (743-7433)

Fax: (919) 783-5272 • E-mail: ncsa@ncsheriffs.net • www.ncsheriffs.org

The North Carolina Sheriffs' Association is a Non-Profit, tax exempt organization recognized by the I.R.S.

MEMORANDUM

Date: March 19, 2018

From: The North Carolina Sheriffs' Association

To: Mandy K. Cohen, MD, MPH
North Carolina Department of Health & Human Services
101 Blair Drive
Raleigh, NC 27603

Re: Proposed Readoption of Jails, Local Confinement Facilities Rules – 10A NCAC 14J

The following public comment and objections to various provisions in the Proposed Readoption of Jails, Local Confinement Facilities Rules – 10A NCAC 14J – are being submitted by the North Carolina Sheriffs' Association. The rules highlighted in yellow throughout this Memorandum represent changes to the proposed rules that are being requested by the North Carolina Sheriffs' Association.

I. **10A NCAC 14J .0101** Definitions

A. Subsection (10): Contraband

The North Carolina Sheriffs' Association objects to the proposed changes to the definition of contraband. Under the proposed rule change, contraband will be defined to only include those items listed in G.S. 14-258.1 and 258.2. This represents a significant step backwards for jail safety and will prevent local jails from enforcing rules against numerous forms and amounts of contraband that are not listed in the above-referenced statutes.

The definition of contraband should remain unchanged. In the alternative, contraband should be defined as follows to ensure continued safety in local jails:

(10) "Contraband" ~~is~~ means any item that a person is not authorized to possess in the jail because it is a violation of ~~law or a violation of rules~~ G.S. 14-258.1 and G.S. 14-258.2, or any other item a person is not authorized to possess in the jail because it is a violation of law, administrative rule, policy, or regulation applicable to the jail.

B. Subsection (18): Dormitory

The definition of "dormitory" should be modified to clarify that the sleeping space and the dayroom space in a dormitory may be separated by security doors. Dormitory should be defined as:

(18) "Dormitory" ~~is~~ means an area designed to house ~~up to 40~~ inmates ~~and~~ that combines dayroom space with sleeping space, and may be designed such that the dayroom space and sleeping space are separated by a physical barrier, such as safety doors.

C. Subsection (21): Fire Evacuation Training

The proposed definition of fire evacuation training delegates to a local fire marshal the decision on whether inmates should be required to “relocate” during a fire safety drill performed in accordance with 10A NCAC 14J .0403. The North Carolina Sheriffs’ Association objects to this proposed change to the definition of fire evacuation training, as this takes responsibility of jail order, discipline and security away from the Office of Sheriff and is potentially in violation of G.S. 162-22. In addition, this delegation of authority exposes personnel and inmates to unnecessary risk in the event inmates are ordered to relocate at the direction of a fire marshal and against the sound judgment of the sheriff or regional jail administrator.

Fire evacuation training should be defined as:

(21) "Fire evacuation training" means instructing officers and jail staff in procedures related to the evacuation or relocation of building occupants when there is a fire in the jail. The instruction shall simulate an actual fire and a rehearsal of actions needed by officers and jail staff for the evacuation or relocation of building occupants but may not require the actual relocation of inmates within the jail or to the outdoors. ~~The local fire marshal shall determine whether the rehearsal shall include the actual relocation of inmates within the jail or to the outdoors.~~

D. Subsection (56): Supervision rounds

The North Carolina Sheriffs’ Association objects to the proposed definition of supervision rounds because the definition is confusing and overly complicated, and will require personnel to walk through a cellblock, dayroom or dormitory even under circumstances where the detention officer can directly observe all of the inmates without walking through the cellblock, dayroom or dormitory.

The proposed definition also creates a scenario where it would be compliant with the rule to observe an inmate through a cell door window, but would not be compliant if a detention officer observed all of the inmates within a dayroom from a fixed location such as the control room. This is because under the proposed definition the detention officer would have to leave the control room and “walk-through” the dayroom.

In order to bring clarity to this proposed rule change and to ensure sheriffs and regional jail administrators retain the discretion as to when a “walk-through” should be conducted, supervision rounds should be defined as:

(56) "Supervision rounds" means an in-person check of inmates by an officer entering and walking through a cellblock, dayroom, or dormitory, or by directly observing each inmate unassisted by an electronic device, or by a combination of the two methods. ~~For a cellblock or dayroom, the officer shall walk past and view into each cell and observe the inmate within the cell. If during the supervision rounds inmates are located in the dayroom and not in their cells, the officer shall observe each of the inmates located in the dayroom. For a dormitory, the officer shall walk through the dormitory and observe each inmate. An officer shall conduct the in-person check at time intervals specified in Rule .0601(a) of this Subchapter.~~

II. 10A NCAC 14J .0203 Contents of Operations Manual

Subsection (20) of this rule will require the sheriff to have a written procedure for a “suicide prevention program” within the jail’s Operations Manual. However, there is no definition or guidance in the proposed rule as to what would or should constitute an appropriate “suicide prevention program.” The North Carolina Sheriffs’ Association has been advised by Division of Health Service Regulation staff that this proposed rule change contemplates a suicide prevention plan, meaning the procedural steps a jail should take in the event of a threatened suicide or suicide attempt. Upon information and belief, the proposed rule change was not intended to require the establishment of a suicide prevention “program” similar to those used to treat substance abuse.

Subsection (20) of this rule must be modified as follows to clarify that the operations manual shall contain a suicide prevention plan as opposed to a “program:”

(20) a suicide prevention program plan, which shall mean an individual jail’s plan with written procedures that indicate what actions should be taken by the jail in the event of a suicide attempt or threatened suicide.

III. 10A NCAC 14J .0301 Classification System and Total Design Capacity

This proposed rule change will require an inmate to be housed where “the medical needs” of the inmate will be met. There is no differentiation in the proposed rule between the medical needs of an inmate (which will mean anything and everything, no matter how minor) and the REASONABLE medical needs of the inmate. The North Carolina Sheriffs’ Association objects to this proposed rule change as written because the change will require medical treatment that is not necessary or reasonable, and not currently required by statute or case law. The insertion of the term “reasonable” in section (a)(1) of the proposed rule change will address this issue.

The proposed rule change as written will also require a level of security that is subject to strict liability if not met. The proposed rule change does not account for the fact that there may be security breaches or assaultive behavior by inmates despite all reasonable efforts used to classify and secure inmates. Sections (a)(2) and (a)(3) of the proposed rule must therefore be modified to clarify that reasonable efforts should be used to classify and secure inmates.

The proposed rule should also be modified to clarify that a sheriff should “consider” sections (a)(1) through (a)(3) when classifying an inmate for placement, but may also consider other factors deemed relevant by the sheriff or regional jail administrator.

Finally, the North Carolina Sheriffs’ Association objects to the proposed rule change that requires a jail to transfer inmates to another jail or prison when the total design capacity is reached. This will apply even if the jail is over capacity by one or two inmates for even one day and will also apply if the jail can accommodate the overage (such as by temporarily housing in a dormitory). The proposed rule change fails to account for circumstances where a jail may have a temporary influx of inmates, such as on a weekend when a county may experience numerous arrests. This proposed rule should be modified to state that a jail “may not exceed its total design capacity by more than 10% for a period of 30 consecutive days.” This will alleviate the issue of the temporary

influx of inmates on weekends and will allow some flexibility to account for changing inmate populations.

The proposed changes to rule 10A NCAC 14J .0301 should be modified as follows to account for the significant issues raised above:

10A NCAC 14J .0301 CLASSIFICATION SYSTEM AND TOTAL DESIGN CAPACITY

(a) Each jail shall have a written classification procedure for the placement and housing of inmates. ~~Within the limitations imposed by the design and capacity of the jail, the procedure shall assign inmates to confinement units that best meet their individual needs and that reasonably protect the inmate, other inmates, the jail staff, and the public.~~

The procedure shall include consideration of the following criteria for inmate placement:

- (1) the reasonable medical needs of the inmate;
- (2) the reasonable level of supervision needed by the inmate related to the inmate's assaultive or non-assaultive behavior toward officers and other inmates; and
- (3) the reasonable level of security needed by the inmate to prevent the inmate's escape; and
- (4) other factors deemed relevant by the sheriff or regional jail administrator.

(b) When the jail exceeds its total design capacity by more than 10% for a period of 30 consecutive days, the sheriff, regional jail administrator, or their designees shall relocate inmates to another jail or prison to bring the number of inmates confined into compliance with the total design capacity.

IV. 10A NCAC 14J .0302 **Female Inmates**

This proposed rule change states that a jail may not "house" male and female inmates in the same confinement unit, dayroom, dormitory or "program area." The proposed rule does not define what is meant by "house." However, program area is defined by the rules to include educational areas.

The North Carolina Sheriffs' Association objects to this proposed rule change as written because it may prevent male and female inmates from attending rehabilitation programs together and could result in longer periods of incarceration while awaiting completion of treatment programs.

The North Carolina Sheriffs' Association objects further to the proposed rule change because the rule will prevent many small jails from housing special watch inmates of the opposite sex in the same confinement unit even if they cannot see each other and cannot converse with each other. This will set smaller jails up for failure because they are simply unable to comply with this new rule due to size and design of the jail.

The proposed changes to rule 10A NCAC 14J .0302 should be modified as follows to account for the significant issues raised above:

10A NCAC 14J .0302 FEMALE INMATES

~~Male and female inmates shall not be placed in the same confinement unit, dayroom or other living area and, in addition, female inmates shall be housed out of sight of male inmates.~~ Pursuant to G.S. 153A-228, the jail shall not house female and male inmates in the same confinement unit, dayroom, dormitory, or program area. Inmates shall be housed in the jail where they cannot converse with, see, or be seen by inmates of the opposite

sex. Housed shall mean where the inmate sleeps and lives, but does not include: 1) program areas where inmates attend co-ed educational or substance abuse programs; 2) temporary holding cells where inmates of the opposite sex are unable to converse with each other or see each other; or 3) special confinement units or special confinement cells where inmates of the opposite sex are unable to converse with each other or see each other.

V. 10A NCAC 14J .0403 Fire Plan, Fire Evacuation Training, and Disaster Plan

This proposed rule change requires “fire evacuation training” on a quarterly basis, with 90% staff participation. This proposed rule is **unworkable** as written because jails will typically not be able to have 90% of their staff present for the training each quarter. This proposed rule change must be modified to require 90% participation annually, and must clarify that inactive employees (such as those on medical leave) will not be required to attend the training. This will allow sheriffs and regional jail administrators to coordinate staff schedules so that by the end of the fourth quarter there is at least 90% participation in fire safety training for active duty staff.

The North Carolina Sheriffs’ Association further objects to the proposed rule change because it gives the local fire marshal the authority to decide whether inmates should be required to “relocate” during a fire safety drill. This provision exposes personnel and inmates to unnecessary risk and also creates unnecessary liability for the sheriffs and counties. The ultimate decision on whether inmates should be relocated during a fire safety drill should remain with the sheriff or regional jail administrator and the rule should be modified to correct this issue.

Finally, subsection (d) of the proposed rule requires that a sheriff or regional jail administrator shall “review and update” the disaster plan annually. This proposed rule should be modified to clarify that the disaster plan should be updated “only if deemed necessary by the sheriff or regional jail administrator.”

The proposed changes to rule 10A NCAC 14J .0403 should be modified as follows to account for the significant issues raised above:

10A NCAC 14J .0403 FIRE ~~PLAN~~-PLAN, FIRE EVACUATION TRAINING, AND DISASTER PLAN

(a) Each jail shall have a written plan for the evacuation and control of inmates in the event of a fire. ~~The plan shall include at least quarterly fire drills, and records shall be made of the fire drills and retained. The actual movement of inmates to other areas or outside the building is not required.~~

(b) Ninety percent of officers and jail staff shall receive fire evacuation training on a quarterly basis annually, to be held at quarterly intervals as determined by the sheriff or regional jail administrator. Inactive employees, such as those on medical leave, shall not be required to attend the training. ~~Evacuation~~ The evacuation routes used in the fire evacuation training shall be posted or otherwise clearly marked throughout the jail, in the jail for viewing by officers. The sheriff or regional jail administrator shall determine whether the relocation of inmates during the fire evacuation training is necessary. The sheriff or regional jail administrator shall maintain written documentation of the fire evacuation training. The sheriff or regional jail administrator shall make this documentation available to the Construction Section during an inspection upon request.

(c) ~~The sheriff or the regional jail administrator shall request in writing that the local fire department or fire marshal inspect the jail and review the fire plan at least once each year. If the local fire department or fire marshal has not inspected the jail and approved the fire plan within 12 months of the date of their last inspection, the sheriff or regional jail administrator shall request in writing an inspection and approval of the plan from the local fire department or fire marshal. The sheriff or regional jail administrator shall maintain written documentation of either the inspection and the approved fire plan, or the written request for inspection and approval of the plan. The~~

sheriff or regional jail administrator shall make this documentation available to the Construction Section during an inspection upon request.

(d) Each jail shall have a disaster plan that shall be documented as having been submitted to the local emergency management agency. The sheriff or regional jail administrator shall review and, if deemed necessary, update the disaster plan in writing not less than once each year beginning on January 1. The date of the most recent review and approval shall be stated in the plan. The disaster plan shall be maintained at the jail and shall be made available to the Construction Section during an inspection upon request.

VI. 10A NCAC 14J .0601 Supervision

The North Carolina Sheriffs' Association objects to this proposed rule change as written because the change requires "supervision rounds" to take place not more than 35 minutes apart and also requires "special watch rounds" to take place no longer than 20 minutes apart. The proposed rule creates safety issues for both inmates and detention officers, as it allows inmates to observe the patterns of "supervision rounds" and "special watch rounds," thereby making rounds predictable. These strict time intervals must be removed from the proposed rule in order maintain jail safety.

The proposed rule should also be modified to clarify that rounds are not required to start at the top of the hour, as many jails start their rounds at differing intervals. Therefore, rounds should be based on a 60 minute period, as determined by the jail.

In addition, section (e) of the proposed rule is confusing and could be interpreted to state that a detention officer may not engage in any other activities while assigned to rounds, even if those other duties do not interfere with the detention officer's rounds. The North Carolina Sheriffs' Association has been advised by Division of Health Service Regulation staff that this proposed rule change does not prohibit detention officers from engaging in other tasks while assigned to rounds, provided those tasks do not interfere with the rounds. Section (e) should therefore be modified to state clearly that a detention officer tasked with "supervision rounds" or "special watch rounds" may be assigned to other tasks, such as delivering food to inmates or escorting inmates to medical, so long as those tasks do not interfere with the officer's scheduled rounds.

The North Carolina Sheriffs' Association further objects to this proposed rule change as written because the change requires personnel to walk-through a cellblock, dayroom or dormitory even if the detention officer can visually observe each inmate without walking through these areas. If all inmates are in the dayroom or other area where the detention officer can directly observe all inmates, there should be no requirement to walk through the dayroom or look into locked cells. Having such a walk-through requirement at such strictly set intervals is a safety issue because the inmates will be able to predict staff routines. In order to remedy this significant issue, supervision rounds should be defined as "an in person check of inmates by an officer entering and walking through a cellblock, dayroom, or dormitory, or by directly observing each inmate unassisted by an electronic device, or by a combination of the two methods."

Finally, the North Carolina Sheriffs' Association objects to this proposed rule change as written because the change requires an inmate with a previous suicide attempt to be placed on "special watch rounds," regardless of when that suicide attempt took place and regardless of whether the inmate is currently suicidal. This proposed rule is problematic because an inmate could have been incarcerated years or months before when the suicide attempt occurred, but is no longer a threat.

The proposed rule change should be modified to state that those inmates with a previous suicide attempt that have been medically examined and have been determined by medical personnel not to be a threat to themselves or to others should not be required to be placed on special watch rounds.

The proposed rule change should also define “attempted suicide.” Lack of a definition will include individuals that inflict self-injury, such as scarification or branding, but that do not have suicidal intent. Attempted suicide should be defined per the DSM-5 as a self-destructive act deliberately carried out where there is a clear expectation of death.

The proposed changes to rule 10A NCAC 14J .0601 should be modified as follows to account for the significant issues raised above:

10A NCAC 14J .0601 SUPERVISION

(a) ~~Officers~~ A jail shall have an officer make supervision rounds and ~~directly~~ observe each inmate ~~in-person at least~~ not less than twice per hour on an irregular basis basis with not more than 35 minutes between rounds. “Supervision rounds” means an in-person check of inmates by an officer entering and walking through a cellblock, dayroom, or dormitory, or by directly observing each inmate unassisted by an electronic device, or by a combination of the two methods. Supervision rounds shall be conducted 24 hours a day, 7 days per week. The supervision rounds shall be ~~documented~~ documented and maintained as written or electronic records. These records shall be made available to the Construction Section during an inspection upon request. ~~If remote electronic monitoring is used to supplement supervision, it shall not be substituted for supervision rounds and direct visual observation.~~ The supplemental methods of supervision specified in Paragraph (b) of this Rule shall not substitute for supervision rounds.

(b) ~~In addition to the supervision rounds required in Paragraphs (a) and (c) of this Rule, each~~ A jail shall utilize one or ~~both~~ more ~~of the following~~ supplemental methods of ~~supervision~~: supervision 24 hours a day, 7 days a week. The supplemental methods of supervision are:

- ~~(1) Direct or remote~~ direct two-way voice ~~communication with all confinement units~~ communication;
- ~~(2) Visual contact either through direct observation or by means of electronic surveillance with all confinement units;~~ remote two-way voice communication;
- (3) direct visual observation; and
- (4) video surveillance.

~~(c) Officers shall directly observe, at least four times per hour, inmates who display the following behavior:~~

- ~~(1) physically hitting or trying to hit an officer; or~~
- ~~(2) being verbally abusive; or~~
- ~~(3) stating he will do harm to himself; or~~
- ~~(4) intoxicated, as determined by a bore of .15 on a breathalyzer or displaying slurred speech or smelling of alcohol or inability to control body movement; or~~
- ~~(5) displaying erratic behavior such as screaming, crying, laughing uncontrollably, or refusing to talk at all.~~

~~In addition to displayed behavior, a previous record of a suicide attempt or a previous record of mental illness shall warrant observation at least four times per hour.~~ While an inmate is on special watch, as specified by this Paragraph, the jail shall have an officer conduct special watch rounds and observe the inmate not less than four times per hour on an irregular basis with not more than 20 minutes between rounds. Special watch shall be conducted 24 hours a day, 7 days a week. The special watch rounds shall be documented. The jail shall

maintain written or electronic records of the special watch rounds and shall make these records available to the Construction Section during an inspection upon request. The supplemental methods of supervision specified in Paragraph (b) of this Rule shall not substitute for a special watch. An inmate shall be on a special watch for the following reasons:

(1) an inmate with a medical record maintained and preserved by the jail as required by Rule .1001(b)(7) of this Subchapter that indicates the inmate has attempted suicide at a previous time, unless the inmate has been medically evaluated and has been determined by medical staff to not be a threat to themselves or to others;

suicide attempt shall be defined as a self-destructive act deliberately carried out where there is a clear expectation of death;

(2) an inmate who reports a previous suicide attempt or threatens to commit suicide during their initial screening upon admission required by Rule .1001(b)(1) of this Subchapter, unless the inmate has been medically evaluated and has been determined by medical staff to not be a threat to themselves or to others;

(3) an inmate who has been assigned to special watch by medical or mental health personnel of the jail or an officer;

(4) an inmate who displays any of the following behavior:

(A) physically hitting or trying to hit an officer;

(B) verbal abuse of other people;

(C) threatening other people or engaging in self-injury;

(D) screaming, crying, laughing uncontrollably, or refusing to talk; and

(5) an inmate who is intoxicated by alcohol or drug use as determined at intake by one of the following:

(A) a blood alcohol content level of .15 or greater as measured;

(B) use of slurred speech; or

(C) the inability to control body movement.

(d) ~~Officers shall~~ A jail shall make sure that officers remain awake at all ~~times~~ times while on duty.

(e) ~~Officers shall not be assigned other duties that would interfere with the continuous supervision, custody or control of inmates. When an An~~ officer is assigned to supervise inmates as required by Paragraph (a), (b), and (c) of this Rule, ~~a jail shall not assign the officer~~ may be assigned other tasks ~~that would if those tasks do not~~ interfere with the supervision of inmates. These other tasks ~~shall~~ may include:

(1) delivering food to inmates;

(2) preparing inmates for and transporting inmates to court;

(3) escorting inmates to medical appointments;

(4) performing inmate booking and release functions;

(5) supervising inmates working in the jail; and

(6) exchanging inmate's soiled clothing, bed sheets, and blankets with clean clothing, bed sheets, and blankets.

(f) ~~Female~~ A jail shall have female officers ~~shall be~~ on duty when female inmates are confined.

(g) The sheriff or the ~~administrator of the~~ regional jail administrator shall develop ~~a~~ contingency personnel ~~plan~~ plans for the supervision and control of inmates during ~~an emergency, and that plan~~ a fire, an emergency event, or an emergency situation that includes rioting, bomb threats, escapes, and the taking of hostages. The contingency personnel plans shall provide for the ~~ready~~ availability of extra personnel. A contingency personnel plan shall be included in the emergency plans required by Rule .0203(18) of this Subchapter and the disaster plan required by Rule.0403(d) of this Subchapter.

(h) ~~Inmates~~ A jail shall not ~~be allowed~~ allow an inmate to supervise or assume any control over other inmates.

VII. 10A NCAC 14J .1001 Medical Plan

The North Carolina Sheriffs' Association objects to this proposed rule change as written because the proposed rule change greatly expands the routine medical care jails will be **required** to provide inmates. Jails will now be required to provide the following under the umbrella of "routine" medical care: 1) mental health care; 2) developmental and intellectual disability care; and 3) substance use disorder care. These newly expanded areas of medical care are not funded and will create a budget crisis for local confinement facilities.

This proposed rule change exceeds the authority of the Division of Health Service Regulation and the North Carolina Department of Health and Human Services and will require all local medical plans to provide as routine treatment mental health care, developmental and intellectual disability care, and substance use disorder care. G.S. 153A-225 requires local jails to provide emergency medical care for inmates, in addition to routine medical care pursuant to a medical plan adopted by the local governing body. Such a drastic increase in the scope of medical services must be undertaken, if at all, by the General Assembly through enactment of legislation and must include adequate funding to provide such services.

The North Carolina Sheriffs' Association further objects to this proposed rule change as written because the use of the term "substance use disorder" is, per the DSM-5 definition, very broad and includes substances such as nicotine.

Finally, this proposed rule change will prohibit an inmate from rendering emergency CPR or other emergency care, such as attempting to stop the bleeding from a wound, even when properly trained and will prevent inmates from participating in substance abuse support groups or from acting as counselors within those types of support group meetings within the jail.

None of the currently proposed changes to 10A NCAC 14J .1001 should be adopted until such time as the costs associated with these proposed changes are known and adequate funding is made available to facilitate these drastic changes to the rules.

VIII. 10A NCAC 14J .1002 Screening of Inmates

The proposed rule change greatly expands the medical screening jails will be required to conduct on inmates. Jails will now be required to provide screening for the following needs: 1) mental health care; 2) developmental and intellectual disability care; 3) substance use disorder care; and 4) risk of suicide.

These expanded areas of screening will create substantial funding and liability issues for local confinement facilities. Furthermore, the North Carolina Sheriffs' Association is not aware of any standard screening forms that have been developed by the North Carolina Department of Health and Human Services that will facilitate the expanded screening contemplated by this proposed rule change.

None of the currently proposed changes to 10A NCAC 14J .1002 should be adopted until such time as the costs associated with these proposed changes are known, adequate funding is made

available and appropriate screening forms are developed to facilitate the implementation of such a rule change.

IX. 10A NCAC 14J .1207 Inmate Processing Area and Padded Cell

Subparagraph (c)(3) of this proposed rule change requires a padded cell to “be located to allow observation of the cell by an officer 24 hours a day 7 days per week.” This proposed rule change is confusing and conflicts with the supervision requirements set out in rule 10A NCAC 14J .0601. This subparagraph must be stricken from the proposed rule change as 10A NCAC 14J .0601 already sets out the supervision requirements of an inmate on special watch.

Furthermore, Subparagraph (c)(7) of this proposed rule change requires a door panel with a view large enough for the entire cell. This arrangement will not work for a padded cell located in an inmate processing area, as the flow of traffic through the area from inmates and jail staff will allow onlookers to view into the padded cell. This subsection should therefore be modified as follows to allow for greater privacy for the padded cell located in the inmate processing Area:

(7) have a door with a view panel large enough to permit observation of the entire cell, or be equipped with a video surveillance system that allows for the observation of the inmate;

X. 10A NCAC 14J .1210 Other Areas

This proposed rule change will require new and renovated jails to have both indoor and outdoor recreation space. This will be an additional cost that counties will have to absorb. Such a mandate exceeds the authority of the Division of Health Service Regulation and the North Carolina Department of Health and Human Services. Appellate court case law provides that inmates are entitled to meaningful exercise, but that outdoor exercise is not required. Providing outdoor recreation space should be at the discretion of the sheriff or regional jail administrator.

Furthermore, requiring both indoor and outdoor recreation space will require more jail staff and will increase the cost of supervision. Outdoor recreation space also increases the ability of inmates to hide contraband in these outdoor areas and increases the risk of contraband being introduced into the jail through the use of drones or by other means.

Subparagraph (c) of the proposed changes to rule 10A NCAC 14J .1210 should be modified as follows to account for the significant issues raised above:

- (c) Each jail shall have ~~an area or areas specifically designated for~~ either indoor ~~and- or~~ outdoor physical ~~exercise.~~ exercise areas, or both, at the discretion of the sheriff or regional jail administrator. The indoor and outdoor exercise areas shall meet the following requirements:

XI. 10A NCAC 14J .1225 Standards for Dayrooms

The proposed rule change will require Dayrooms to have seating and table space for the entire capacity of the cellblock, even if the operation of the jail does not necessitate full seating capacity.

Seating for the total design capacity is unnecessary when, for example, the jail has a policy to let out only a portion of the inmate population at a time for meals and other activities.

The removal of the word “sufficient” from the rule should be placed back into the rule to require “sufficient” seating and table space for the cellblock.

Subparagraphs (3) and (4) of the proposed changes to rule 10A NCAC 14J .1225 should be modified as follows to account for the issue raised above:

(3) **sufficient** seating for the capacity of the ~~unit~~ cellblock;

(4) **sufficient** table space for the capacity of the ~~unit~~ cellblock, unless each inmate has unrestricted access to their cell with a table and chair, in which case the dayroom shall have sufficient table space for 70 percent of the capacity of the ~~unit~~ cellblock;

XII. **Effective Date**

The North Carolina Sheriffs’ Association objects to the effective date of these proposed rules. The December 1, 2018 effective date will not allow ample time to arrange for the staffing and funding that will be needed to implement these drastic changes to the jail rules.