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# Jail Administrators' Institute of Leadership

## Burning Questions

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**1. Is there a statute or formula for officer to inmate ratio?**

**ANSWER:** No, there is no mandated officer to inmate ratio.

North Carolina law provides no formula for an officer to inmate ratio. The North Carolina Administrative Code sets out the requirements for rounds (10A NCAC 14J .0601), but it does not contain an officer to inmate ratio.

In addition, the North Carolina General Statutes do not provide such a ratio.

**2. What do you do with a frivolous grievance?**

**ANSWER:** Any inmate grievance should be thoroughly investigated.

After the grievance is appropriately resolved, even a frivolous one, records of the grievance and the associated investigation need to be maintained pursuant to Item 52 of the North Carolina Department of Cultural and Natural Resources (NCDCCR) Records Retention and Disposition Schedule for County Sheriffs' Offices, even if it is determined that the grievance is frivolous.

Your sheriff does not have to approve the Records Retention and Disposition Schedule for County Sheriffs' Offices, however if he/she does not approve the schedule, your office must contact NCDCCR prior to the destruction of any record and obtain its approval for said destruction. G.S. 121-5; G.S. 132-3.

Per the Schedule, records of the grievance and actions taken in response (if any) should be:

- at a minimum, retained for 3 years after the inmate making the grievance is released or transferred from the facility
- retained 5 years after final court action, if any legal action is taken regarding the grievance and the case is adjudicated in the courts
- retained 5 years after settlement, if any legal action is taken and the case is settled, or
- permanently retained in office litigation records if legal action is taken on the grievance and it has any precedential or historical value to the agency.

After the applicable period, the records can be destroyed in office by any method approved in 7 N.C.A.C. 4M .0510 (such as shredding or burning). If these records are originally in paper format and you would like to retain them solely in electronic format, you must develop an electronic records policy and then submit a Request for Disposal of Original Records Duplicated by Electronic Means to the NC Dept. of Cultural and Natural Resources. If approved, you may destroy the original record. The form can be found at: <https://archives.ncdcr.gov/government/digital-records/digital-records-policies-and-guidelines/request-disposal-original-records-duplicated-electronic-means>

The 3-year minimum retention requirement per NCDCNR's schedule dovetails with the statute of limitations for claims under 42 U.S.C. § 1983, which is also 3 years. Inmates bringing excessive force claims or conditions of confinement claims often bring those claims under 42 U.S.C. § 1983 and records of grievances, including frivolous ones, are often highly relevant to those claims.

You should talk to your agency's legal advisor, who may advise retaining them longer. Also, if the grievance involves specific personnel, the resolution of any investigation should be noted in their personnel files, even if the grievance is ultimately determined to be frivolous.

### 3. **Inmate ability to possess religious articles (ex. prayer mats, Buddha statues, etc.) and demand religious diets**

**ANSWER:** These two issues are dealt with in the same answer as they involve the same analysis.

Unfortunately, there are no clear-cut rules in this area of the law that apply across the board to every detention facility and every requested religious article or diet. Every request must be handled on a case-by-case basis. Inmates do not lose their constitutional rights by virtue of confinement, though those rights can be **heavily circumscribed** by the government.

Due to the complexity involved in the legal analysis regarding the ability to possess religious articles, you should consult with your legal advisor who will undertake a legal analysis similar to what is described below.

#### I. **First Amendment Analysis applies if your agency receives no federal funding.**

If your agency does not receive federal funds then it is not subject to the Religious Land Use and Institutionalized Persons Act (RLUIPA), which is discussed in detail below. However, you are still subject to the First Amendment in the context of religious claims.

First Amendment analysis is less demanding than RLUIPA. Per the First Amendment, an inmate's right to exercise their religion may only be restricted by measures that are "**reasonably adapted to achieving a legitimate penological objective.**" *Lovelace v. Lee*, 472 F.3d 174, 200 (4th Cir. 2006); *see also Spies v. Voinovich*, 173 F.3d 398 (6th Cir. 1999); *Tyler v. Lassiter*, 2016 U.S. Dist. LEXIS 27161 (E.D.N.C. March 3, 2016).

In order to determine if the policy is reasonably adapted to achieving a legitimate penological objective, courts ask the following questions:

- (1) Is there a valid rational connection between the facility regulation or action and the interest asserted by the facility (or is the interest so remote as to render the policy arbitrary or irrational);

- (2) Are inmates deprived of all forms of religious exercise or are they able to participate in other observances of their faith (does the inmate have an alternative means of worship);
- (3) What impact would the desired accommodation (i.e., requested religious article or diet) have on jail personnel, inmates, and the allocation of prison resources; and
- (4) Are there any “obvious, easy alternatives” to the challenged facility action (which may suggest that it is not reasonable but is instead an exaggerated response to facility concerns)?

*Lovelace*, at 200.

Under the First Amendment analysis, facility officials “do not have to set up and then shoot down every conceivable alternative method of accommodating” an inmate’s request, and any alternative must “fully accommodate the [inmate’s] rights at [minimal] cost to valid penological interests.” *Davila v. Gladden*, 777 F.3d 1198, 1214 (11th Cir. 2015).

As to diets, there is also a State regulation on the issue. “Modified diets shall be provided when reasonably possible to accommodate the sincerely held religious beliefs of an inmate.” 10A N.C.A.C. 14J .0905 (2021).

## **II. Religious Land Use and Institutionalized Persons Act (RLUIPA)**

If your agency receives federal funds, it will be subject to the Religious Land Use and Institutionalized Persons Act (RLUIPA). 42 U.S.C. § 2000cc-1 (2021). RLUIPA prohibits a government entity from imposing a “substantial burden” on an inmate’s sincere religious exercise unless:

1. there is a compelling government interest in doing so; and
2. the restriction is the least restrictive means of furthering that compelling government interest.

### **A. Exercise of Religion**

Under the federal statute, “religious exercise” includes “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5 (2021). An inmate is not required to show that the religious exercise at issue is required by or essential to their religion. *Krieger v. Brown*, 496 Fed. Appx. 322, 325 (4th Cir. 2012) (unpublished) (underline added).

## **B. Substantial Burden**

A government entity imposes a “substantial burden” when an entity’s act or omission puts substantial pressure on a person to modify his or her behavior and to violate his or her beliefs. *Krieger*, at 325.

The complaining inmate must prove that the facility’s policies substantially burden *their* sincere exercise of *their* religion. In *Krieger*, the inmate practiced Asatru (Heathenism) and requested an outdoor worship circle, a large piece of cloth for creating a banner, a large horn cup, an “oath ring,” cardboard replicas of Thor’s hammer, a spear, a shield, an axe, and a bow and arrow, an amber bead, three feathers, a “shuffling rune set,” a “cloth helm,” a small ceremonial bowl, incense, honey, and pendants with images of a shield, an axe, and a bow and arrow.

The facility did not provide these items and the inmate sued under RLUIPA. His suit failed because the court found he did not prove that depriving him of those items substantially burdened his exercise of his religion. The inmate said the items were “necessary” to perform “well-established rituals,” however he never identified the rituals or explained why the absence of the requested items had an impact on the rituals or violated his beliefs. Also, the literature submitted to the court on Asatru included a list of “mandatory religious items for Asatru worship,” which was identical to the items the facility did allow.

The same resolution was obtained in *Alston v. Eldridge*, 2019 U.S. Dist. LEXIS 162682 (E.D.N.C. Sept. 24, 2019). A Rastafarian inmate requested a particular medallion with a necklace; the facility agreed to allow him to obtain just the medallion through an approved vendor. He refused and then challenged the facility’s action under RLUIPA. The district court held that his challenge failed because he could not prove how being deprived of a medallion *with a necklace*, as opposed to just the medallion, would substantially burden his religious exercise.

## **C. Compelling Government Interest**

If a plaintiff proves that (1) they seek to engage in an exercise of religion, and (2) that the detention facility’s action or inaction substantially burdens that exercise, the detention facility must then prove that its action or inaction is motivated by a compelling government interest and is the least restrictive means of achieving that interest.

The following have been found to be compelling government interests justifying a burden on religious exercise:

- the interest in preventing the flow of contraband. *Ali v. Stephens*, 822 F.3d 776 (5th Cir. 2016)

- promoting institutional security/keeping the effective functioning of an institution from being placed in jeopardy. *Alston v. Eldridge*, 2019 U.S. Dist. LEXIS 162682 (E.D.N.C. Sept. 24, 2019).

-maintaining good order and controlling costs. *Baranowski v. Hart*, 486 F.3d 112 (5th Cir. 2007).

-maintaining security, discipline, and order. *Barefoot v. Pickett*, 2010 U.S. Dist. LEXIS 84211 (W.D.N.C. 2010).

-institutional – preventing inmates from being placed in a position of leadership over other inmates – preventing inmates from forming hierarchies among themselves. *Utt v. Brown*, 2015 U.S. Dist. LEXIS 131347 (E.D.N.C. Sept. 29, 2015).

#### **D. Least Restrictive Means**

Even if there is a compelling government interest respecting a religious article or religious diet, that interest still must be accommodated in the least restrictive way possible to survive a RLUIPA challenge. For instance, in *Ali v. Stephens*, even though the court found that preventing the flow of contraband was a compelling government interest, it still struck down a facility’s ban on beards longer than 1 inch (the Muslim inmate claimed he needed to grow a fist-length (approx. 4 inch) beard in observance of his religion) because it found that the facility could satisfy its interest in preventing contraband in the facility by requiring inmates with facial hair to periodically comb their fingers through it in the presence of staff. As the combing option was less restrictive than an outright ban on longer facial hair, the ban was unlawful under RLUIPA.

In *Baranowski v. Hart*, the inmate requested a Kosher diet and was denied a Kosher diet, although a pork-free diet or vegetarian diet was provided. The inmate sued under RLUIPA and the court found that the denial of the Kosher diet did not violate RLUIPA because the facility had a compelling government interest in maintaining order and controlling costs and denying a Kosher diet was the least restrictive means of controlling costs.

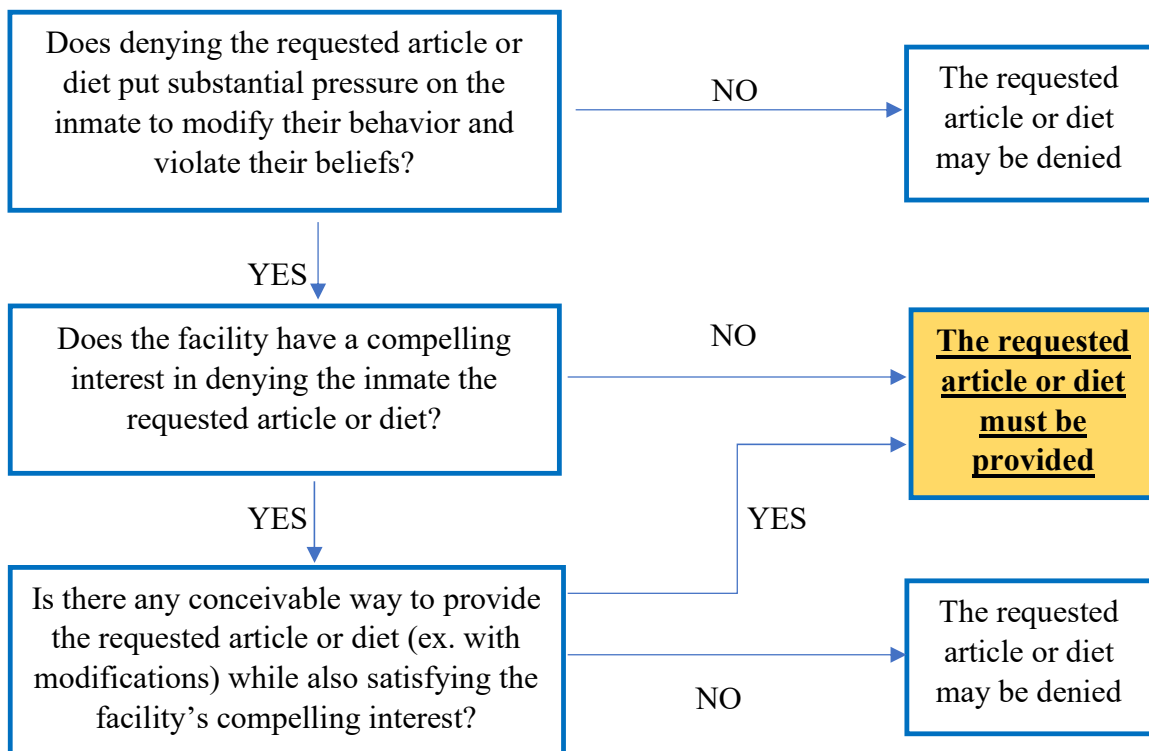
The facility established that its budget was “not adequate to cover the increased expense of either providing a separate kosher kitchen or bringing in kosher food from the outside”, that the facility’s ability to provide a nutritionally appropriate meal to other offenders would be jeopardized (since the payments for kosher meals would come out of the general food budget for all inmates), and that such a policy would breed resentment among other inmates.

#### **E. The Facility is not Required to Buy the Religious Article**

Although RLUIPA prevents a detention facility from denying certain religious articles to inmates, it does not require the facility to purchase the article(s) for the inmate. *Cutter v. Wilkinson*, 544 U.S. 709, 720 n. 8 (2005); *Hall v. Bradshaw*, 2013 U.S. Dist. LEXIS 162284 (W.D.N.C. Nov. 14, 2013).

## F. Practical Effect of RLUIPA

If your facility is governed by RLUIPA and an inmate makes a request for a religious article or religious diet, the facility should go through the following analysis:



### 4. **Must the jail let inmates attend funerals in person?**

**ANSWER:** There is no such legal requirement.

In the absence of State law, regulation or agency policy, there is no constitutional right to funeral attendance. If your jail already has a policy that dictates inmates *must* be allowed to attend a funeral (it does not give the sheriff or jail personnel any discretion to deny attendance) such a policy *may* create a constitutional right to funeral attendance.

Your agency's legal advisor should first be consulted if your jail does not currently have a policy on funeral attendance but is deciding whether to adopt one.

#### I. If there is no jail policy on funeral attendance:

No, as there is no legal or constitutional right to do so.

“There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Gaston v. Taylor*, 946 F.2d 340, 344

(4th Cir. 1991). “Inmates do not enjoy a freestanding constitutionally protected right to attend the funerals of relatives.” *Renfrow v. Morris*, 2001 U.S. Dist. LEXIS 27089, at \*5 (E.D. Va. Aug. 15, 2001), aff’d 26 Fed. Appx. 286 (4th Cir. 2002). “Inmates have no specific constitutional right to a furlough, whether for visitation of sick relatives or attendance of funerals.” *Hipes v. Braxton*, 878 F. Supp. 56, 57 (W.D. Va. 1995). “A prisoner does not retain a liberty interest in attending a family members [sic] funeral and the denial does not impose an atypical or significant hardship on the inmate in relation to the normal incidents of prison life.” *Toman v. Mecklenburg County Sheriff’s Dept.*, 2008 U.S. Dist. LEXIS 84752, at \*2 (W.D.N.C. Aug. 11, 2008).

II. If there is a jail policy that provides that inmates *may*, in the jail personnel’s or sheriff’s discretion, be allowed to attend funerals:

As long as the policy is not applied in a manner that violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Law of the Land Clause of the North Carolina Constitution or other federal law, inmates may be denied the ability to attend a funeral.

III. If there is a jail policy that provides that inmates *must* be allowed to attend funerals:

State law, regulation, and policies can create a protected liberty interest if the State law, regulation, or policy establishes that State officials must take mandatory, non-discretionary actions. *See Boyd v. Lasher*, 2010 U.S. Dist. LEXIS 10638 (E.D. La. Jan. 12, 2010).

Note: G.S. 148-4 is the only North Carolina statute that even touches on this subject and: (1) it applies to the prison system, not local confinement facilities; and (2) it is discretionary.

If your office already has in place a policy that says inmates must be allowed to attend funerals in person upon request, this may (and we stress “may”) create a protected liberty interest. However, absent such a policy, there is no requirement, constitutional or otherwise, that inmates be allowed to attend funerals in person.

**5. Why does a jail have to pick up an inmate with pending charges being released from prison on the same day?**

**ANSWER:** We first note that, per NCDPS policy, “[a]ny agency holding a warrant, detainer, or notification shall be contacted at least 72 hours prior to the scheduled release to establish transfer of custody.” NCDPS – DACJJ Policy and Procedures Manual Q .0104(f) (June 6, 2019). Note: a “notification” is a letter DPS sends to an agency notifying the agency that a prisoner will be released. An agency can request to be notified by DPS of the release of a prisoner and request the issuance of such release notification. If such a request is made, DPS will send the agency a “notification” letter in advance of the prisoner’s release date in accordance with the policy above.



Prior to release of an inmate, prison staff is required to determine if there are pending charges, detainers or notifications by reviewing the information in OPUS (Offender Population Unified System), CJ LEADS, and AOC files and by conducting a statewide search using the offender's name. NCDPS – DACJJ Policy and Procedures Manual Q .0104(e) (June 6, 2019).

The Association is working with NCDPS leadership to ensure that the above search and notification requirements are followed without exception.

Detaining an inmate after their release date can be held to be a violation of their constitutional rights. “[T]he Due Process Clause of the Fourteenth Amendment guarantees to individuals the right to be free from excessive continued detention after a jail or prison ceases to have a legal right to detain the individual.” *Owens v. Bulter*, 2016 U.S. Dist. LEXIS 15673, \*12 (E.D.N.C. Feb. 9, 2016) (quoting *Powell v. Sheriff, Fulton Cnty. Georgia*, 511 F. App'x 957, 960 (11th Cir.)) (quotation marks omitted).

Continued incarceration of a prisoner after his sentence is terminated can constitute violations of the prisoner's rights under the Fourteenth Amendment and the Eighth Amendment. *Golson v. Dep't of Corr.*, 914 F.2d 1491 (4th Cir. 1990) (per curiam).

Per G.S. 15A-711, an inmate who is the subject of a detainer must be released to the sheriff but may not be held in confinement beyond the date on which he is eligible for release.

**6. If an inmate is to be released from prison but still has SMCP time to serve, why is the inmate transported to the county of conviction instead of to the assigned SMCP county (the receiving county)?**

**ANSWER:** The North Carolina Sheriffs' Association's current policy is that it will not assign an inmate to a receiving county until the county of conviction first has custody of the inmate in their jail.

This policy is currently being reviewed by the Association and the Association will immediately notify all sheriffs and jail administrators in the event it is changed.

**7. When an inmate in prison is being released with extraditable offenses in another state, why are they released to the jail in the county where the prison is located?**

**ANSWER:** Because there is no State statute that requires the person to be released back to the county of conviction.

If an inmate in NCDPS custody is in the process of being extradited and their sentence of imprisonment ends, NCDPS must release the inmate, who then can only be detained in a county jail to await requisition per G.S. 15A-735 or G.S. 15A-732. This should only happen if the extradition process is not complete when the inmate's prison sentence ends.

If the extradition process is complete before the person's prison sentence ends, the requisition agent of the state demanding custody can head straight to the NCDPS facility where the person is imprisoned and pick them up from there.

“. . . [T]he judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense . . .” G.S. 15A-735 (2021) (emphasis added). The time period for commitment can be extended for another 60 days by order of the magistrate. G.S. 15A-737 (2021).

“The officer or person executing the Governor's warrant for arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city . . . until the officer or person having charge of him is ready to proceed on his route . . .” G.S. 15A-732 (2021) (emphasis added).

The extradition process works like this for NCDPS inmates who have extraditable offenses:

1. This State notifies another state that we have their fugitive in custody. We spoke to the extradition agent at NCDOJ who told us that she tries to make the notification early enough to allow the extradition process to be completed before the inmate's prison sentence ends.
2. The inmate is taken before a judge or clerk to see if the inmate will waive jurisdiction under G.S. 15A-746. If the inmate decides to waive extradition that is the end of the process; the requisition agent from the demanding state can come pick them up as soon as possible. If the inmate does not waive extradition, then the process continues.
3. If the inmate does not waive extradition, a prosecutor in the demanding state must make a formal requisition request to our Governor and an extradition hearing is held if necessary.

If the inmate's prison sentence ends at any time up to this point, the inmate must be transferred to the county jail to be held under a fugitive warrant or order (AOC-CR-909M or AOC-CR-910M) per G.S. 15A-735. See NCDPS -DACJJ Policies and Procedures Manual G.0105(d) (Oct. 20, 2014).

4. If our Governor decides that the request should be honored, the Governor will issue a Governor's warrant directing that the inmate be taken into custody.
5. The Governor's warrant will be served on the inmate and the inmate will be taken before a judge pursuant to G.S. 15A-730, where they will be notified of their right to obtain legal counsel and their right to pursue a Writ of Habeas Corpus. The Governor's warrant can be served by any person designated by the Governor but, in practice, is most often served by a deputy sheriff.

If the inmate decides not to pursue a Writ of Habeas Corpus, the extradition process is complete and the requisition agent from the demanding state can take custody of the inmate at this point.

6. If the inmate decides to pursue a Writ of Habeas Corpus, then proceedings will be had under Chapter 17 of the General Statutes and a hearing may be held. If the judge determines that the inmate should be discharged, the inmate will be discharged. If the judge determines that custody is lawful, the inmate will be remanded back into custody.

At this point, the extradition process is complete and the requisition agent from the demanding state can take custody. If the inmate's prison sentence ends at any time between the issuance of the Governor's warrant and this point, the inmate must be transferred to the county jail to be held under the Governor's warrant per G.S. 15A-732.

Markam, Jamie. *Extradition and the Interstate Compact for Adult Offender Supervision, Advanced Criminal Procedure for Magistrates*. Found at: [https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course\\_materials/01-f-Extradition%20\(advanced%20crim%20pro%20for%20magistrates\).pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/01-f-Extradition%20(advanced%20crim%20pro%20for%20magistrates).pdf)

## 8. **Guidelines for housing and providing exercise to transgender inmates.**

**ANSWER:** The standards for housing transgender inmates differ depending upon if your facility is pursuing compliance with the Prison Rape Elimination Act (“PREA”) or not.

The standards for providing exercise to transgender inmates and inmates that identify with their birth sex are the same and are contained within 10A N.C.A.C. 14J .1004 (2021).

### **Housing - PREA Standards**

PREA does apply to local confinement facilities but is not enforceable against them, unless a facility is pursuing national accreditation through an organization that receives federal funds or is housing federal inmates.

Also, any SMCP housing contracts entered into on or after August 1, 2015 contain a clause requiring the receiving county and sheriff to adopt and comply with PREA and allow NCDPS to monitor compliance with PREA. SMCP housing contracts entered into before this date do not contain such a clause.

PREA requires that all inmates be assessed during intake or upon transfer to another facility for their risk of being sexually abused by other inmates or being sexually abusive toward other inmates. 28 C.F.R. 115.41 (2021). During this assessment, the facility must consider whether the inmate is or is perceived to be “gay, lesbian, bisexual, transgender, intersex (a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit

typical definitions of male or female), or gender nonconforming . . .” 28 C.F.R. 115.41 (2021). PREA also requires periodic reassessments. 28 C.F.R. 115.21 (2021).

The facility must then use the results of the assessment in housing inmates. 28 C.F.R. 115.42 (2021). Specifically, “[i]n deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.” 28 C.F.R. 115.42 (2021).

A transgender or intersex inmate’s own-views with respect to his or her safety must be given serious consideration and placement and programming assignments for each transgender or intersex inmate must be reassessed at least twice each year to review any threats to safety experienced by the inmate. 28 C.F.R. 115.42 (2021).

Transgender and intersex inmates must be given the opportunity to shower separately from other inmates. 28 C.F.R. 115.42 (2021). Furthermore, the facility cannot place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless the placement is in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting those inmates. 28 C.F.R. 115.42 (2021).

### **Housing – State Standards**

Even if your facility is not subject to PREA, it is still subject to State law restrictions. The State does not have any statutes or regulations that explicitly refer to transgender inmates and, for the most part, does not distinguish between transgender individuals and individuals that identify with their birth sex.

However, under State law, “male” and “female” prisoners must be confined in separate facilities or in separate quarters in local confinement facilities. G.S. 153A-228 (2021); 10A N.C.A.C. 14J .0302 (2021). This may pose a problem if a facility is trying to pursue PREA compliance, as the terminology in the statute is very likely referring to biological sex (the statute was enacted in 1967 and last modified in 1973). This could cause a conflict if a detainee is biologically male but presents as a transgender woman, or vice versa. In this case, PREA may prefer that the transgender inmate be placed with female inmates to decrease the chance of sexual victimization, but the State statute will prevent it.

### **It may be feasible to place the transgender inmate in single-cell accommodations to reduce the chance of victimization.**

### **Housing – Constitutional Requirements**

The constitutional requirements for the housing of transgender inmates are the same as the constitutional requirements for the housing of any inmates – they must be housed in sanitary conditions, given adequate nutrition and toilet facilities. *Sweet v. South Carolina Dept. of Corrections*, 529 F.2d 854 (4th Cir. 1975); *Bolding v. Holshouser*, 575 F.2d 461 (4th Cir. 1978); 10A N.C.A.C. 14J .0704 (2021); 10A N.C.A.C. 14J .1217 (2021).

If the constitutional requirements for housing transgender inmates differs from those of inmates that identify with their birth sex, it is because of the former's increased risk of being subject to sexual violence and victimization. "A prisoner has a right, secured by the eighth and fourteenth amendments, to be reasonably protected from constant threat of violence and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief." *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973).

Where jail officials with knowledge of "a pervasive and unreasonable risk of harm" to inmates, fail to take reasonable steps to prevent such harm, their conduct may amount to deliberate indifference and both violate the constitutional rights of the inmates concerned and subject the officials to liability under federal law. *Moore v. Winebrenner*, 927 F.2d 1312, 1315 (4th Cir. 1991).

### **Exercise**

The State and constitutional standards for exercise do not distinguish between transgender inmates and inmates that identify with their birth sex. Inmates have a constitutional right to exercise. *Hall v. Williams*, 1992 U.S. App. LEXIS 6853, at \*8 (4th Cir. 1992).

"After the fourteenth consecutive day of confinement, each inmate shall be provided opportunities for physical exercise at least three days weekly for a period of one hour each of the days. Physical exercise shall take place either in the confinement unit if it provides adequate space or in a separate area of the jail that provides adequate space. The opportunity for physical exercise shall be documented." 10A NCAC 14J .1004 (2021).

## **9. What to do with problematic inmates, such as those who destroy mattresses and sinks.**

**ANSWER:** Consider disciplinary action and/or criminal charges.

Jails are required to have an Operations Manual containing written policies addressing inmate rules and discipline. 10A NCAC 14J .1705. As such, there are various restrictions and disciplinary options that can be implemented as policies for behavior like this. The Supreme Court's decision in *Wolff v. McDonnell* in 1974 recognized that convicted prisoners subject to disciplinary deprivations of liberty or property interests are entitled to notice, a hearing (which may involve witnesses and documentary evidence), and an explanation of the resulting decision. 418 U.S. 539, 557-58 (1974). The same is true for pre-trial detainees. "If the restriction imposed by jail officials is a disciplinary one — arising from a pretrial detainee's misconduct in custody — the detainee is entitled to notice of the alleged misconduct, a hearing, and a written explanation of the resulting decision." *Williamson v. Stirling*, 912 F.3d 154, 175 (4th Cir. 2018). Any disciplinary policy implemented for these problematic inmates must account for these constitutional requirements.

As to permissible disciplinary actions, there are a range of options. "Courts have routinely held that jails have a legitimate governmental objective in placing unruly detainees in isolation lockdown to "maintain[] institutional security, and preserv[e] internal order and discipline." *Petty v. Krause*, 2012 U.S. Dist. LEXIS 89455, \*15-16 (M.D.N.C. June 28, 2012) (citations omitted). The use of restraint chairs has consistently been upheld where

the inmate is acting in a manner that is or may cause severe property damage or bodily injury to other persons. *Burr v. Macon Cty. Sheriff's Office*, 2019 U.S. Dist. LEXIS 3683, \*14 (W.D.N.C. Jan. 9, 2019).

Limiting or eliminating privileges is another option. Even eliminating the use of the shower facilities for 12 days has been upheld as a permissible disciplinary action. *See Johnson v. Fields*, 2017 U.S. Dist. LEXIS 189448, \*30-31 (W.D.N.C. Nov. 16, 2017) (and noting several other cases in which suspension of showering has been upheld as valid). A monetary penalty for property damage is also appropriate and a lien may be placed on the inmate's in-facility account. *Carter v. Butler*, 2011 U.S. Dist. LEXIS 139344, \*9 (E.D.N.C. Dec. 5, 2011).

Finally, inmates who destroy jail property may be criminally charged.

**10. Federal inmates with contract – is it permissible to refuse to accept more inmates than the contract specifies?**

**ANSWER:** Yes, depending on the language in the Intergovernmental Agreement.

Parties to a contract are bound by the terms contained within the agreement. Where the agreement specifies that the local confinement facility will provide a certain number of beds for federal inmates, if it is currently housing that number of federal inmates, there is no obligation for the facility to accept more than that number unless the contract contains a provision stating otherwise.

We can find no legal authority that would allow the Bureau of Prisons to force a local confinement facility to accept federal inmates beyond the number stated in a contract.

In addition, if a jail could not house the federal inmates because of jail capacity limitations, then a sheriff could refuse to honor the contract based upon impossibility.

**11. How to handle neighboring jails who delay or refuse to come pick up inmates arrested on charges from another county.**

**ANSWER:** This question is more about comity and cooperation between the sheriffs of North Carolina than a question about the law. If an individual is arrested on an out-of-county warrant or other criminal process, there is no statute or case-law that directly addresses when the charging county must pick up the individual and place them in its custody.

However, there are some statutes that indirectly place a limitation on how long the arrestee can stay in the arresting county. For instance, if the charging county is not in the same judicial district as the arresting county, then the arresting county will not be able to perform the first appearance, as the first appearance must be conducted before “a district court judge in the district court district . . . in which the crime is charged to have been committed.” G.S. 15A-601(a) (2021). The first appearance must be conducted, at a maximum, within 72 hours after the arrestee has been taken into custody. G.S. 15A-601(c) (2021).

Although violations of G.S. 15A-601 do not automatically affect the validity of a trial on the charge in the absence of a showing that the defendant was prejudiced, *State v. Burgess*, 33 N.C. App. 76, 78 (1977), it is expected that sheriffs will work together to ensure that flagrant and routine violations of the statute are not occurring.

If you are aware that a particular county or counties are routinely untimely in accepting custody of detainees arrested in your county on out-of-county charges such that it is jeopardizing the rights of the arrestee(s) and/or causing issues in your detention facility, the best thing to do is to notify your sheriff so that he or she can try to resolve the issue with the sheriff of that county.

**12. DOC is releasing an inmate with outstanding charges. Who can pick them up on those charges?**

I. Offenses for Which the Warrants have Already Been Served:

If an individual is being released from the custody of the prisons, but a warrant (felony or misdemeanor) has already been served on the individual for the outstanding charge *and the inmate has already had their initial appearance on the charge and been committed to the custody of your jail by a judicial official*, a deputy or certified detention officer who is not also a certified deputy may proceed to the prison unit and take the individual into custody.

II. Offenses for Which Warrants have not been Issued or Served:

Felonies:

- a. Can a deputy from the home county legally pick-up the inmate from an out-of-county prison and bring them to jail?

**ANSWER:** Yes, if there is probable cause to believe the felony was committed in the deputy's home county.

If there is probable cause to believe the newly released inmate committed a felony within the deputy's home county, that deputy can warrantlessly arrest the released inmate in the county of release per G.S. 15A-401 and G.S. 15A-402. "Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within [the county]." G.S. 15A-402.

An officer may arrest without a warrant any person whom the officer has probable cause to believe committed a felony. G.S. 15A-401. However, upon arrest the officer must comply with G.S. 15A-501 and, among other things, take the arrestee before a judicial official (magistrate) "without unnecessary delay." If upon the initial appearance before a magistrate, the individual is either denied or cannot make bail, they may then be committed to your jail to await trial.

- b. Can a deputy (from the home county) go to an out-of-county prison and serve an arrest warrant if it is a felony warrant from the county picking up the inmate?

**ANSWER:** Yes, if the subject of the felony arrest warrant is a felony committed in the deputy's home county. Per G.S. 15A-401, "[a]n officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction. Per G.S. 15A-402, the territorial jurisdiction of county officers to make arrests is any place in the state if the arrest is based upon a felony committed in the officers' county. However, once again, the deputy must, without unnecessary delay, take them before a judicial official for an initial appearance.

Misdemeanors:

- a. Can a deputy from the home county legally pick-up the inmate from an out-of-county prison and bring them to jail?

**ANSWER:** No, as the deputy will not have the territorial jurisdiction to arrest the individual in the county where the prison is located. G.S. 15A-402. If a deputy does this, it could potentially expose the sheriff to liability.

- b. Can a deputy (from the home county) go to an out-of-county prison and serve an arrest warrant if it is a misdemeanor warrant from the county picking up the inmate?

**ANSWER:** No, as, once again, the deputy will not have the territorial jurisdiction to arrest the individual in the county where the prison is located. An officer is only authorized to serve an arrest warrant within that officer's territorial jurisdiction. G.S. 15A-401.

III. Detention Officers Taking Custody – Is it legal for jail staff to pick them up?

**ANSWER:** If a commitment order has not already been issued by a judicial official committing the person to the custody of your jail - **No!!**

Certified detention officers that are not also certified deputies are without the power of arrest. See 12 N.C.A.C. 10B .0103(17). Furthermore, if an individual has not been committed by a judicial official to the care of your sheriff through a commitment/release order (AOC-CR-200), non-deputy staff are without authority, other than as private citizens, to detain them. See G.S. 15-126; 15A-404. The authority of private persons to detain other citizens (1) is merely to detain, not to transport, (2) is only for certain offenses committed *in the presence* of the person detaining, and (3) will almost never apply to this situation.

If non-deputy jail staff pick-up an individual who is **not yet committed to their detention facility** by a judicial official, this could expose the sheriff to liability.

**13. How should prisons (DAC) handle inmates who have outstanding warrants that need to be served?**

**ANSWER:** There is a statute on the issue already – G.S. 148-10.5. "In order to facilitate successful reentry . . . the Department of Public Safety shall work with law enforcement . . . to develop a process by which, both at intake and before release, effort is made, for each



inmate in custody, to identify all outstanding warrants on the inmate. The plan should seek to resolve inmates' outstanding warrants while in custody, whenever feasible.”

We have contacted Sammy Said (Associate General Counsel with NCDPS – DACJJ) and he relayed that there is no detailed process on this yet, but that NCDPS is working on it.

There is a NCDPS policy already on the books that specifies that “[a]ny agency holding a warrant, detainer, or notification shall be contacted at least 72 hours prior to the scheduled release to establish transfer of custody.” NCDPS – DACJJ Policy and Procedures Manual Q .0104(f) (June 6, 2019).

**14. Is there any case law that allows jails to limit inmates to a specified number of books they can order per week or month? What is the ability to limit the number of books an inmate can possess?**

**ANSWER:** There is case law addressing limits on the number of books that an inmate may possess. The number of books can be limited as needed for issues such as security, fire safety, sanitation, allowing proper cell searches, and limiting the places an inmate could store contraband. As noted below, our 4<sup>th</sup> Circuit Court of Appeals upheld a book limit of 13 at one time.

The cases that address this issue do so in the context of whether a book limit policy violates an inmate’s right to free exercise of religion. In *Gordon v. Mullins*, which was subsequently affirmed by the 4<sup>th</sup> Circuit Court of Appeals, a book limit of 13 at one time was upheld. 2014 U.S. Dist. LEXIS 37639, \*14 (W.D. Va. March 20, 2014). In *Garroway v. Lappin*, the Third Circuit Court of Appeals held that the Bureau of Prison’s policy limiting the number of books an inmate could possess in his cell to five was not an infringement of an inmate’s constitutional right to free exercise of religion. 490 Fed. Appx. 440, 445 (3<sup>rd</sup> Cir. 2012).

**15. Fake legal mail and sending contraband items within mail.**

**ANSWER:** As to legal mail (privileged mail from an attorney), there are certain limitations on how a detention facility may inspect it. Incoming legal mail may only be opened in the presence of the inmate. *Wolff v. McDonnell*, 418 U.S. 539, 574 (1974); *Haze v. Harrison*, 961 F.3d 654, 658 (4<sup>th</sup> Cir. 2020). Incoming legal mail may not be read, but it may be opened in the presence of the inmate and inspected for contraband. Outgoing legal mail should be mailed without inspecting it or opening it, as there is no risk that contraband will be *introduced* into the facility by this method.

If there is suspicion that an inmate is trying to send coded messages or instructions outside of the facility under the guise of legal mail, then the facility should investigate as to whether the outgoing mail is indeed legal mail by checking the sending address, contacting the purported recipient to see if they represent the inmate, or other means. If it is determined that mail is not legal mail, then it may be opened and read.

All incoming and outgoing non-legal mail may be opened and read outside the presence of the inmate. *Altizer v. Deeds*, 191 F.3d 540, 549 (4th Cir. 1999). Any contraband may be confiscated and, if any traffic in contraband through the mail is attributed to an inmate, the inmate may be subject to internal discipline for it.

**16. Can an inmate be denied protective custody/special privileges? Is there a requirement to review the denial and re-evaluate every thirty days?**

**ANSWER:** If an inmate truly needs protective custody, it is in the facility's best interest to provide that arrangement as "[a] prisoner has a right, secured by the eighth and fourteenth amendments, to be reasonably protected from constant threat of violence and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief." *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973).

If an inmate is not initially afforded protective custody because the facility determines there is no risk of harm or assault, there is no law that specifies a period within which the denial must be re-evaluated or reconsidered. If the inmate's situation changes significantly, the decision should be re-evaluated, whether it is 10 days from the initial denial, or 5 days, or 1 day. The detention facility cannot be deliberately indifferent to a pervasive and unreasonable risk of harm to an inmate or inmates.

As to special privileges, they can be denied and the provision and/or denial of privileges in the jail usually is an integral part of any disciplinary policy for inmates. In fact, the operations manual for the jail must include information on inmate rules and discipline. 10A N.C.A.C. 14J .0203(a)(5). If an inmate's special privileges are limited or revoked as a part of a disciplinary action, there is no law that specifies when that decision must be re-evaluated or reconsidered. If your facility's inmate disciplinary policy specifies such a period, follow your facility's policy.

**17. County A has charges. The person charged is arrested in County B and goes to the hospital in County B. County A gets an unsecured bond (may be a zero bond). County B hospital then transports the arrestee to County C hospital. Is County A required to send a deputy to the hospital in County C to stay with the arrestee until the arrestee is conscious and can decide if they want an unsecured bond or to stay in custody?**

**ANSWER:** No. If the person has not been remanded to the custody of County A in a commitment/release order (AOC-CR-200), then County A has no duty to produce the person for trial or to safeguard them pending trial.

**18. When inmate mail is scanned can the original be destroyed?**

**ANSWER:** This is a developing area of the law, however, presumably, non-legal mail may be destroyed after digitization.

The Virginia Dept. of Corrections' (VDOC) policy of digitizing and then destroying incoming non-legal inmate mail has been upheld and found not to be in violation of the First Amendment. *Strebe v. Kanode*, 2018 U.S. Dist. LEXIS 158615 (W.D. Va. Sept. 18, 2018); *Bratcher v. Clark*, 2018 U.S. Dist. LEXIS 166939 (E.D. Va. Sept. 26, 2018); *Couch v. Clarke*, 2019 U.S. Dist. LEXIS 54256 (W.D. Va. March 29, 2019), affirmed *Couch v. Clarke*, 782 Fed. Appx. 290 (4th Cir. 2019) (unpublished). Under the policy, non-legal mail meeting the size and page limits was scanned and then the envelope, letter, and other original contents were shredded. Mail that was sent exceeding the size and page limits was returned to sender.

In *Couch*, the inmate also specifically challenged that the destruction of his mail was a violation of his 14<sup>th</sup> Amendment Due Process liberty and property interests. The court found that his mail was not censored as he received the substance of the communication and was able to respond; therefore, the destruction of his mail did not constitute a liberty interest violation. Furthermore, the court found he did not have a protected property interest in the mail as the "original" mail became contraband after the enactment of VDOC's policy; therefore, the destruction of his mail did not amount to a deprivation of property by the State.

A 3rd Circuit Court of Appeals case found no 1<sup>st</sup> or 4<sup>th</sup> Amendment violation in the use of a similar process (provided legal mail was treated differently). *Robinson v. Pa. Dep't of Corr.*, 851 Fed. Appx. 289 (3d Cir. 2021) (unpublished).

There is nothing prohibiting a facility from offering a grace period before destruction of the mail to allow the inmate-recipient or sender to provide other means for its disposition. Smart Communications (the contractor that handles many of these correctional mail digitizing policies) had a policy of retaining the original for 45 days before destruction. TextBehind is the mail processing vendor for North Carolina prisons. Also, there is nothing prohibiting a facility from allowing the inmate or family member to pay for the cost of shipping the original back to the sender.

**19. Writs: Who transfers the inmate and what is the legal responsibility?**

**ANSWER:** There are two differing legal interpretations on the answer to this question. The law is unclear as to which county has this transport responsibility when it is necessitated by a writ of habeas corpus ad prosequendum (whereby the defendant must be taken to court in another county in which he or she has pending charges). We will include both interpretations of the answer to this question.

## **Interpretation 1**

The interpretation offered by NCSA attorneys is that the requesting county is responsible for picking up and transporting the defendant back to that county to appear in court for pending charges. This conclusion is based upon the plain language of the writ itself in AOC-CR-223 and comparing what that language specifically orders the custodial sheriff to do versus the sheriff of the requesting county.

As can be seen when examining the writ portion of the form, the custodial agency is required to deliver the defendant to the custody of the sheriff of the requesting county “so that the defendant may be brought before” the court in the requesting county.

Looking further down in the writ section, it orders either “The Sheriff of This County” (the requesting county) or “Other \_\_\_\_\_” to **“serve this writ upon the agency named above; to take the defendant into custody and bring him/her before this Court on the date and at the time and place shown above and, when the court proceeding has been completed and the defendant is released by the court, to return the defendant to the custody of that agency unless the court directs otherwise.”**

If “The Sheriff of This County” box is checked, NCSA reads this as a clear order for the sheriff of the requesting county to transport the defendant who is the subject of the writ of habeas corpus ad prosequendum to the requesting county. Given the presence of the “Other: \_\_\_” checkbox, the Court can always specify differently.

## **Interpretation 2**

The alternate interpretation, which is offered in a [blog post](#) by Jamie Markham at the UNC School of Government, is that the county with custody of the defendant (“the custodial county”) is responsible for transporting the defendant to the county that applied for the writ of habeas corpus (“the requesting county”). This conclusion is based upon the language within G.S. 17-26, which sets forth the penalty for failing to obey a writ of habeas corpus, and on certain language in AOC-CR-223.

Pursuant to G.S. 17-26, “[i]f any person to whom a writ of habeas corpus is directed shall neglect or refuse to . . . bring the body of the party detained according to the command of the writ without delay, . . . such person shall, upon conviction on indictment, be fined one thousand dollars (\$1,000), or imprisoned not exceeding 12 months, and if such person be an officer, shall moreover be removed from office.” Based upon this language, the custodian that has “the body” must produce it, which, under Jamie’s interpretation, suggests the responsibility for transporting the inmate would belong to the custodial county.

Further, the writ form orders the custodial agency to “deliver the defendant to the custody of the sheriff of this [the requesting] county.” The same language is used in the AOC form used to apply for and issue a writ of habeas corpus ad testificandum, where an inmate is needed to testify (AOC-G-112).

Jamie Markham’s assessment is that the above language, considered together, indicates that the custodial county is responsible for transporting the individual who is the subject of the writ of habeas corpus ad prosequendum.

Given that this area of the law leaves room for two interpretations, legislative clarification would be beneficial to sheriffs.

**20. Is it mandated or is there case law on the percentage strength of pepper spray allowed in jail?**

**ANSWER:** No.

**21. Is a law enforcement officer required to serve a warrant?**

**ANSWER:** No.

G.S. 15A-401 (Arrest) states that the officer “**may**” arrest the person named or described in the arrest warrant but there is no requirement that the officer **shall** make the arrest. In addition, G.S. 15A-301 (Criminal process generally) provides that criminal process “**may**” be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged.

Practice Tip: Be aware that if the officer does not serve the warrant for arrest and the person with an outstanding warrant later commits a crime, this could reflect negatively on the officer or agency.

**22. Does a judge have the legal authority to reduce a defendant’s bond (even to zero) without the defendant’s signature?**

**ANSWER:** Yes. There is no law that prohibits a judge from reducing a bond simply because the defendant refuses to sign paperwork or cannot sign the paperwork. G.S. 15A-534(e) states:

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

**23. Can a jail limit the number of books on a tablet to 5 books?**

**ANSWER:** Limitations can be placed on the number of books, whether those are printed books or books stored on an electronic tablet. There is no set number we can provide to respond to this question because these issues are described in case law with varying results.

This question has already been answered in question **Number 14** of the original burning questions. The same analysis applies to books on an electronic tablet as it does to traditional printed books. There is no case law authority we can identify that distinguishes reading books on an electronic tablet from printed reading books.

Of course, safety concerns, the cost of maintaining tablets, the storage capability on the tablets, cost of each book to be placed on the tablet, and other factors may weigh towards a jail limiting the number of books available on the electronic tablet. The jail should be prepared to explain why such a policy is in place limiting the number of books to 5 on a tablet.

**24. Can a sheriff have a policy that only allows legal mail and no other non-legal mail for inmates?**

**ANSWER:** No.

Inmates are entitled to receive non-legal mail in some form. Some courts have held that “post-card only” policies, whereby non-legal mail was only allowed in post-card form, were constitutional and did not violate the First Amendment. *See Simpson v. City of Cape Girardeau*, 879 F.3d 273 (8th Cir. 2018). However, other courts have declined to uphold them or expressed skepticism of their constitutionality. *Garber v. Conway*, 2016 U.S. Dist. LEXIS 203407 (N.D. Ga. 2016); *Prison Legal News v. Columbia County*, 942 F. Supp. 2d 1068 (D. Or. 2013).

Furthermore, no North Carolina state or federal district court has considered such a policy, nor has the Fourth Circuit Court of Appeals or the United States Supreme Court. The Association is not aware of any instance where a policy prohibiting all non-legal mail (in whatever format) has been upheld by a court as constitutional.

**25. Do the courts treat restriction on pre-trial detainee mail different from restrictions on convict mail?**

**ANSWER:** No.

From a legal standpoint, the analysis is the same. *See Hause v. Vaught*, 993 F.2d 1079 (4th Cir. 1993). We can find no authority that distinguishes between the two.

**26. Is there a constitutional requirement to allow reading materials in the jail?**

**ANSWER:** Yes.

Inmates are entitled access to reading materials. See, among other cases, *Parnell v. Waldrep*, 511 F. Supp. 764 (W.D.N.C. 1981). “The prohibition of virtually all reading materials deprives the inmates of their First Amendment right to receive information and ideas.” *Parnell*, at 768.

The reading materials can be scanned and censored for reasons such as they are detrimental to jail safety, security, discipline, or they facilitate criminal activity, see *Thornburgh v. Abbott*, 490 U.S. 401 (1989), and “publisher-only” policies for receipt of hardcover publications, whereby hardcover publications can only be received straight from the publisher, have been upheld, see *Bell v. Wolfish*, 441 U.S. 520 (1979), however a permanent ban on all forms and types of reading material would almost certainly violate the First Amendment. See *Beard v. Banks*, 548 U.S. 521, 536 (2006).

**27. If a jail provides inmates access to an assortment of books on a tablet, can they restrict or keep an inmate from having physical books in the jail?**

**ANSWER:** Yes, provided the inmate can access the content of the book electronically. No case has held that denying jail inmates information *in their preferred format* (physical versus electronic) is a constitutional violation.

**28. If a book isn’t available on a tablet, does the inmate have a right to purchase it themselves if there is no security issue?**

**ANSWER:** Yes, presumably. There is a Fourth Circuit case that denied certain pre-trial detainees the right to receive outside publications – *Hause v. Vaught*, 993 F.2d 1079 (4th Cir. 1993). That case upheld a policy that denied the request and receipt of outside publications by short-term detainees (60 days or less), however the main reason underpinning the decision was the logistical issue – usually by the time the facility received the requested publication, the detainee would be released or moved to another facility. Presumably there is no such logistical issue with e-copies of books; as soon as they’re purchased, they’re received. If the publication poses no security issue (and no technical, budgetary or other issue) and they want to buy it, they should probably be allowed.

**29. If a jail has a library where books are available, can they restrict or deny books being sent to inmates or coming into the jail?**

**ANSWER:** As to physical copies of books, maybe for short-term detainees if there is a logistical issue in delivery of the books – see *Hause v. Vaught* discussion in question 2, above. Absent that consideration and if the book (e-book or physical copy) does not pose a security or safety issue, then an outright ban on outside publications is highly likely to be a First Amendment violation. Once again, the facility can inspect all incoming physical books or proposed e-books for contraband and impermissible content before allowing the inmate to take possession. Furthermore, “publisher-only” rules, whereby the inmate or family member must purchase the book from a valid purchaser and have the publication delivered straight from the publisher to the facility, have been upheld.

**30. Can a sheriff have individuals “shadow” detention officers in the jail?**

**ANSWER:** There is no State law that prohibits a sheriff from having someone “shadow” a detention officer in the jail.

In this context, shadowing a detention officer means a person that is observing the detention officer perform his or her duties (such as a criminal justice student), but that has no authority whatsoever to perform any task relating to the control, care or supervision of inmates. This includes, but is not limited to minor tasks such as handing out reading materials, assisting with food service, watching inmates locked in their cells while a detention officer engages in other duties, etc.

**Please Note:** State law requires sheriffs to ensure that any person engaging in the control, care or supervision of inmates: (1) first meets the minimum requirements of a detention officer; (2) is appointed by the sheriff as a detention officer prior to engaging in the control, care or supervision of inmates; (3) a report of appointment must be sent by the sheriff to the Sheriffs’ Standards Division in Raleigh no later than 10 days after the appointment of the person as a detention officer; and (4) the person must complete a commission-accredited detention officer training course within one year from the date of their original appointment as a detention officer to receive a detention officer general certification to continue to engage in the control, care or supervision of inmates.

These provisions are contained in 12 NCAC 10B .0103(13), which defines a “detention officer,” as well as in rule 12 NCAC 10B .0403, which requires the submission of the report of appointment.

Therefore, a violation of State law occurs when any person, including a person “shadowing” a detention officer, engages in the control, care or supervision of an inmate **prior to meeting the minimum requirements of a detention officer and being appointed as a detention officer by the sheriff.**



**31. Can sworn deputy sheriffs work in a jail to supervise inmates on a “part time” or “temporary” basis without being appointed as a detention officer?**

**ANSWER:** No.

The same analysis applied in question No. 30 above applies to this fact scenario as well. Sworn deputy sheriffs, whether they are working on a temporary or part-time basis in the jail, or on a full-time basis, must comply with our State laws and rules cited above regulating persons engaging in the control, care or supervision of inmates.

State law requires sheriffs to ensure that any deputy sheriff (or any other person) engaging in the control, care or supervision of inmates: (1) first meets the minimum requirements of a detention officer; (2) is appointed by the sheriff as a detention officer prior to engaging in the control, care or supervision of inmates; (3) a report of appointment must be sent by the sheriff to the Sheriffs’ Standards Division in Raleigh no later than 10 days after the appointment of the deputy sheriff as a detention officer; and (4) the deputy sheriff must complete a commission-accredited detention officer training course within one year from the date of their original appointment as a detention officer to receive a detention officer general certification to continue to engage in the control, care or supervision of inmates.

A violation of State law occurs if any deputy sheriff (or any other person) engages in the control, care or supervision of inmates **prior to meeting the minimum requirements of a detention officer and being appointed as a detention officer by the sheriff.**