

**STATE OF TENNESSEE**  
OFFICE OF THE  
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February 25, 2009

Opinion No. 09-18

Square Footage Requirements for Jail Cells

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**QUESTIONS**

1. Can the current square footage requirements for unencumbered space in Tennessee jail cells be reduced?
2. If such footage may be reduced, what is the minimum allowable unencumbered square footage for each cell?

**OPINIONS**

1. Yes, the General Assembly can amend Tenn. Code Ann. § 41-4-140(a)(1) to provide specifically the square footage requirements for jail cells or to require the Corrections Institute to use an industry standard different from those currently listed in the statute.
2. The minimum allowable unencumbered square footage for each jail cell cannot be ascertained from the case law.

**ANALYSIS**

Tenn. Code Ann. § 41-4-140(a)(1) provides that the Tennessee Corrections Institute has the power and duty to establish minimum standards for local jails, lock-ups and workhouses. These include standards for physical facilities that approximate, insofar as possible, those standards established by the inspector of jails, federal bureau of prisons, and by the American Correctional Association's Manual of Correctional Standards, or such other similar publications as the Institute shall deem necessary. *See, e.g.*, Rules of the Tennessee Corrections Institute, Minimum Standards for Local Correctional Facilities, Chapter 1400-1-.04. The Institute has the authority to modify the current rules outlining square footage requirements provided the new standards approximate, insofar as possible, those standards established by the entities listed above.

The General Assembly can amend Tenn. Code Ann. § 41-4-140(a)(1) to provide specifically the square footage requirements for jail cells or to require the Corrections Institute to

use an industry standard different from those currently listed in the statute. However, the living conditions in a jail must meet constitutional standards.<sup>1</sup>

The case law does not establish a minimum square foot requirement for jail cells applicable to all situations. A condition of confinement, such as size of living space, amounts to a constitutional violation where there is a serious deprivation of a basic human need, *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), and deliberate indifference to that condition on the part of officials. *Wilson v. Seiter*, 501 U.S. 294 (1991). In determining if living space is so limited that it amounts to a constitutional deprivation, the number of square feet in a jail cell is not necessarily determinative. In a conditions of confinement case courts look at whether various conditions have a mutually enforcing effect that produces the deprivation of an identifiable need. *Id.*, at 304-05 (low temperature cell coupled with a failure to issue blankets). *See, e.g., Williams v. Griffin*, 952 F.2d 820, 824 (4<sup>th</sup> Cir. 1991)(overcrowding and unsanitary conditions are mutually reinforcing). Factors courts might consider include length of time in the jail, length of time in cell every day, sanitary conditions, quality of ventilation system, overcrowding, absence of a classification system, etc.

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<sup>1</sup> The duty owed to incarcerated pretrial detainees is governed by the Due Process Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535, ft. 16 (1979). The Eighth Amendment's prohibition on cruel and unusual punishment governs the treatment of convicted prisoners serving sentences. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The protections are analogous. *Barber v. City of Salem*, 953 F.2d 232, 235 (6<sup>th</sup> Cir. 1992).

Requested by:

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