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The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 29 August 2017

SUBJECT: Housing Tennessee's Convicted Felons: Improving Outcomes while
Balancing State and County Needs—Final Report for Approval

The attached commission report is submitted for your approval. To provide additional information, news articles—one about lawsuits concerning medical care in the Scott County Jail, a second about jail overcrowding in the Rhea County Jail, and a third about overcrowding in the Cheatham County Jail—are also attached.

In March 2007, the Commission released its report *Beyond Capacity: Issues and Challenges Facing County Jails*, which expanded on and updated information from earlier reports published by the Tennessee Comptroller's Office of Research and the Tennessee County Services Association. At the Commission's May 2016 meeting, the Commission chose to revisit the 2007 report, directing staff to determine whether the state, by housing convicted state prisoners in county jails for extended periods as part of the effort to reduce overcrowding in state prisons, is placing an undue burden on county governments. Staff presented a draft report at the May 2017 Commission meeting and has updated the final report to address questions and feedback from members.

Staff has included additional information about how the state reimburses counties for housing state prisoners, providing clarification regarding how counties may contract with the state, and prepared an estimate for the cost to build additional prison capacity to house the more than 4,400 prisoners currently in backup awaiting transfer. Information was also added about how TDOC reimburses counties for medical expenses, emphasizing that counties with contracts are reimbursed for more medical costs than those without a contract.

Despite these additions, the final report's three suggested recommendations are unchanged from the draft report. First, Tennessee could improve access to the behavioral health services provided by the Department of Mental Health and Substance Abuse Services' criminal justice liaison program by expanding the program statewide. Second, Tennessee could target funding to improve outcomes by providing financial assistance to counties to help implement programs proven to reduce recidivism and improve outcomes for prisoners and communities, rather than only increasing per diem reimbursements to cover basic costs. Finally, because adequate oversight and regulation of local jails is necessary for the state to balance its need for fiscally responsible management of the felon population with the responsibility to achieve the best prisoner and public safety outcomes, state law should be amended to give the Tennessee Corrections Institute clear legal authority to require local correctional facilities to comply with set standards, including authority for its Board of Control to recommend that the Tennessee Department of Correction remove state prisoners from noncertified jails when conditions warrant.

Knoxville News Sentinel

Jamie Satterfield, USA TODAY NETWORK - Tennessee Published 5:00 a.m. ET Aug. 7, 2017 | Updated 7:00 a.m. ET Aug. 7, 2017

Inmates at the Scott County Jail are getting sick and at least one has died, a trio of federal lawsuits show.

A surprise inspection of the Scott County Jail last year revealed several problems with its medical care, according to a report obtained Thursday by USA TODAY NETWORK-Tennessee.

Now, that jail, its staff and private medical providers are accused in three separate federal lawsuits of ignoring “cries for help” from an inmate who wound up dead of a staph infection, leaving a woman to languish without care while suffering hundreds of seizures and ignoring an alleged case of tuberculosis.

Failed 2016 inspection

None of those inmates knew the jail didn’t pass muster when they wound up behind bars in the Huntsville, Tenn., facility soon after that 2016 failed inspection by the Tennessee Corrections Institute.

Inmates arriving at the jail weren’t being “consistently” screened for medical conditions, prescriptions or suicide risk as required by state standards, according to a TCI report of a May 26, 2016, inspection of the Scott County Jail.

They weren’t being informed of how to seek medical help while behind bars. A required medical protocol letter had expired. Records designed to prove inmates received medical care were missing required initials and signatures.

Yet, TCI could not close the facility or bar new inmates from being accepted. TCI can only decertify a county jail. Even that isn’t automatic. State law allows counties as much as 60 days to satisfy TCI inspectors.

TCI gave Scott County Sheriff Ronnie Phillips that 60-day extension. In a follow-up report and letter dated July 13, 2016, TCI reported – without explanation or documentation – the jail’s “deficiencies” had been corrected.

Two days later, inmate Tammy Brawner left the jail via ambulance in the throes of seizures that a lawsuit contends she’d been suffering for weeks. She suffered permanent brain injury, according to the lawsuit.

Five days after Brawner was hospitalized, Benny Shane Pemberton was dead from an untreated infection that began with an untreated cut to his foot and spread to his brain, heart and other organs while he was behind bars in the Scott County Jail, a second lawsuit alleges.

Jesse Perry was booked into the Scott County Jail soon after it failed inspection and was placed in a pod of 40 inmates, one of whom claimed he had tuberculosis but said the jail staff were ignoring his coughing, a third lawsuit alleges. Perry did not have TB when he was booked into jail. But when he was transferred from the jail to a state prison a few months later, he tested positive for TB, according to that lawsuit.

The lawsuits – all recently filed within a few months of each other in U.S. District Court – highlight the lack of independent oversight of the quality of medical care provided by private firms and jail staff in the dozens of county jails across Tennessee.

No medical professionals on inspection team

Kevin Walters, a state Department of Commerce and Insurance spokesman, said there are no medical personnel on the TCI inspection team. TCI checks the books solely with an eye toward whether jails are documenting the provision of medical care, not the quality or the quantity of it, Walters confirmed.

Shelley Walker, spokeswoman for the state Department of Health, confirmed her agency doesn't provide any oversight over the quality of inmate medical care either. Although there are medical boards that monitor private firms such as home health providers, no such boards exist for businesses that provide inmate medical care.

Scott County contracts with Advanced Correctional Healthcare Inc., a firm headquartered in Peoria, Ill., and headed by a doctor and his wife. An attorney for the firm did not immediately respond to a request for comment Thursday. The terms of the contract were not available.

USA TODAY NETWORK-Tennessee asked for a copy Wednesday and was directed by the county's Department of Finance to the Scott County Sheriff's Office. Sheriff Phillips refused to see a reporter and did not return a phone message. A TCI report says the county contracted with Advanced in 2009 and that Phillips had met with the firm about problems with its care in March 2015 after the jail failed its inspection then, too.

TCI has a list of standards county jails must meet. Those standards require that all incoming inmates undergo screenings and examinations for medical conditions, prescribed medications and suicidal tendencies. If an inmate remains in jail two weeks after being booked, the standards require another detailed examination. The standards also require county jails to have a medically-supervised detoxification process for inmates who come into the jail in withdrawal from drugs or alcohol.

Lawsuit: Seizures ignored as 'fake'

Brawner, according to a lawsuit filed by attorney Darren Berg, was ordered by her doctor to take a series of drugs daily to keep her from suffering seizures. When she showed up late for court in Scott County General Sessions Court on a drug charge in June 2016, she was jailed.

Berg alleges Brawner was never given her medicine and began suffering a series of seizures over the next week. Berg contends jailers believed Brawner was "faking it" and ignored her.

Her condition grew so bad, the lawsuit alleges, she was taken on July 7, 2016, to the LaFollette Medical Center and diagnosed with seizures. No one told the medical center Brawner had been denied her anti-seizure medicines, according to the lawsuit.

Brawner was stabilized and sent back to jail with a prescription for a seizure drug. Just over a week later, she left the jail for good, in the throes of more seizures and taken by helicopter to a Knoxville hospital. The lawsuit says she's suffered permanent brain injury and cannot even remember being in jail.

Autopsy: Death by untreated infection

Attorney Lance Baker wrote in a lawsuit filed on behalf of Scott County bail bondswoman Donna Sexton, that her son, Benny Shane Pemberton, 41, wound up in the Scott County Jail July 6, 2016, on a charge of failing to pay child support. He had a cut on his foot, the lawsuit stated.

It's not clear if the foot was already infected when Pemberton was booked. But the lawsuit alleges the infection – a tough strain of a staph infection – began to spread, and Pemberton grew increasingly sick.

The lawsuit contends Pemberton couldn't eat and, eventually, couldn't walk. He cried out so often for help, jailers put him in an isolation cell to drown out the sound and, when he couldn't walk, used a disciplinary restraint chair to move him around the jail, Baker wrote.

"Two weeks (after booking) Mr Pemberton was lying naked and comatose on the floor of the isolation cell in his own excrement and urine," the lawsuit stated. "Even externally, his body was in a ravaged and decrepit state, covered by multiple abscesses, contusions, abrasions, deep subcutaneous cuts and lesions. His hands and fingers showed signs of gangrene and according to one medical report, his body exhibited other signs of a 'grossly visible pattern of necrosis.'"

An autopsy concluded he died because the untreated infection ate away at his brain, his heart and other organs, the lawsuit stated.

Jared Effler, the 8th Judicial District Attorney General whose jurisdiction includes Scott County, said he reviewed the autopsy and determined, based on its findings, he did not have enough evidence to pursue a criminal investigation.

TB alleged but no cases reported

Defense attorney Ursula Bailey has filed a proposed class action lawsuit on behalf of Perry and the other inmates who were housed with him in a pod where "Inmate X" claimed untreated TB. Perry tested negative for TB shortly before he was booked on a parole violation. When he was transferred to state prison a few months later, he tested positive, the lawsuit stated.

The Department of Health's Walker said the agency has received no notice from the Scott County Jail of inmates with TB, an infectious and contagious condition the jail would have been required to report.

The lawsuits target Phillips, jail staff, Scott County and, in two of them, Advanced Correctional Healthcare Inc.

The Scott County Jail hasn't been inspected so far this year by TCI, records show.

In the rare event TCI's board votes to decertify a county jail, the facility still doesn't close or stop taking inmates. The biggest consequence of decertification is financial. State and federal governments won't pay a decertified jail to house their respective prisoners, and jail insurance rates usually spike.

<http://www.knoxnews.com/story/news/crime/2017/08/07/federal-lawsuits-allege-lack-proper-inmate-care-scott-county-jail/530983001/>

Times Free Press

State orders Rhea County Jail to fix overcrowding problem

June 28th, 2017 by [Rosana Hughes](#) in Local Regional News Read Time: 6 mins.



Eleven men share a four-bed cell at the Rhea County Jail on Wednesday, June 28, in Dayton, Tenn. Over 200 inmates are housed at the jail which is only approved to house 87.

Photo by [C.B. Schmelter](#) /Times Free Press.

Gallery: Rhea sheriff says something needs to be done to address jail overcrowding as state issues warning

The Rhea County Jail was built to house 87 people, but more than 200 were crammed in Wednesday, creating poor living conditions and possible fire hazards.

"If this was an animal shelter, I'd be in jail," Rhea County Sheriff Mike Neal said Wednesday.

The Tennessee Department of Commerce and Insurance on Tuesday ordered the jail to reduce its inmate overpopulation by 50 percent within the next 30 days and completely eliminate overcrowding within 60 days.

In addition, Neal is required to provide a monthly report on daily inmate populations to the Tennessee Corrections Institute, the state agency that sets minimum standards for jails, for the next year.

The jail, which was built in 1962, is approved to house only 87 inmates, but as of Wednesday afternoon, Neal said the jail had 205 inmates with only two guards. Holding cells are having up to 11 inmates when most are built for four. In the women's area, 25 inmates are jammed into an eight-bed cell with a leak in the ceiling that needs a mop bucket to keep the bed mats from getting wet.

If the sheriff does not submit written proof of a reduction in the overpopulation by the end of the 30 days and complete elimination of the overpopulation by the end of the 60 days, the state fire marshal or district attorney may cite the sheriff to court for an injunction.

The order listed several deficiencies found by the State Fire Marshal's Office, and after four inspections since Feb. 16, four of the six deficiencies — most of which were fire safety violations — were resolved with the exception of the overcrowding violation and a lack of easily accessible emergency keys to unlock cells in case of fire.

Despite the overcrowding, the female inmates said they think the jailers are doing the best they can with what they have.

"It's not a jail problem, it's a court and county problem," said one female inmate in a group of several anxious to have their voices heard.

"It's ridiculous," said inmate Kristina Friddell, who was booked June 23 for violation of probation, according to the Rhea County Jail's website. "You have people falling off the bunks because they can't get down to use the bathroom at night because everyone is on the floor. The roof leaks. The sink leaks. The shower has mold in it. We step all over each other."

The men said they try to get along, but there is often violence with new inmates coming in and out of cells each day. One inmate had a healing black eye he said he got in jail.

"All 11 of us are stuck in here for 23 hours a day with only one hour to make phone calls and shower," said one inmate. "You can't get all of these men showered within one hour."

Inmate Salomon Veliz, who was charged with theft under \$1,000 on March 5, said he had a staph infection for two weeks and was taken to the isolation cell until it healed.

Last week, on June 21, an inmate was found dead in an observation cell, according to WRCB News Channel 3. Amanda Davis was arrested on June 17 and died the day after her court appearance. Neal told the Times Free Press she was taken to the "drunk tank" where guards could talk to her and give her water, but she was not on constant monitoring. He said Davis did not ask to go to the doctor. The Tennessee Bureau of Investigation was called to the jail, and a toxicology report is pending to determine the cause of death, according to WRCB.

Despite the claims of lack of medical care from the inmates, Neal said the jail has not been cited for a violation of medical services before, and in two 2016 inspection records from the TCI, the only deficiencies concerning medical services included a lack of documentation of an annual meeting between the sheriff and a health authority, as well as several inmates refusing 14-day physicals. By the second inspection, the only note was a recommendation to encourage inmates to receive the physicals.

Neal said an inmate who has a minor medical problem has to fill out a form asking to be seen by the doctor who comes once a week. If an inmate needs to see a doctor when she is not there, the sheriff said he can call her to determine whether the inmate needs to go to her office or if it can wait until the following visit. But, "If their sugar's dropped or something serious, we just load them up and take them to the emergency room," he said.

Overpopulation is an issue Neal inherited when he became sheriff 15 years ago, he said. At the time, he said the jail could only house 60 or so inmates, but with an addition that was built in the early 2000s, its capacity rose to 87.

"My headcount has never been at 87," he said. "Court will let 20 go and then we'll get 40 warrants to serve."

Most of those warrants are for violations of probation or drug-related charges, which is nothing new, Neal said. "[The number of offenders has] just continuously progressed and that's what's happening in all the counties."

He said he is going to have to ask for help housing inmates from surrounding county jails, and he estimated the cost at \$1 million per year of taxpayer money — excluding transportation costs — until a new jail is built, which he estimates would take two years once construction begins.

"We've been in the process [of building a new jail] since 2011 with the county commission trying to move forward on getting a new facility built or adding to this facility because of overcrowding," Neal said.

Kevin Walters, spokesman for the Tennessee Department of Commerce and Insurance, said "TCI will assist Rhea County through the County Corrections Partnership to resolve long-term overcrowding and facility plans."

Tuesday evening, the county commission voted to hire Hewlett Spencer LLC, a Nashville-based construction company, as the project manager for the new jail, Neal said. The county is looking at possibly building the new jail on property on Highway 27 North, where a former hospital sits, or on a 7-acre lot that does not have an existing building.

Rhea County Mayor George Thacker said the county is waiting on the construction company to decide which of the two properties is most cost-effective to build the new jail. He said he hopes to know by June 30.

Thacker said there is no good reason for why it's taken so long to move forward with plans for a new jail.

"There's just been other things we needed to get done," he said, giving the example of the school that was built roughly five years ago. It took two years to build and cost \$35 million.

"I want to get this done," he said of the new jail. "I'm hoping to break ground within 90 days."

However, until the new jail is completed, the task remains to find new housing for the 118-inmate surplus. That will be no easy task, given that jails across the country continue to experience their own overcrowding problems. While the nation makes up roughly 4.4 percent of the world's population, it accounts for 20.7 percent of the world's prisoner population, based on 2015 data compiled by the Institute for Criminal Policy Research's World Prison Brief. The Hamilton County Jail, which was built in 1976, for example, underwent an \$8 million renovation and expansion in 1993 so that it could house 520 inmates instead of 275.

In 2016, the jail was cited for having many inoperable fixtures, such as showers, toilets and lights. In March of that year, Chief of Corrections Joe Fowler said he believed the jail was failing to provide acceptable living conditions to inmates because some inmates didn't have regular access to showers or toothbrushes. But building a new facility has been an unpopular issue in the past for county commissioners who have wrestled with whether to spend funds building a new jail versus building new schools.

Jails in Bradley, Meigs, Franklin and Marion counties are nearing or currently experiencing overcrowding problems. The most recently opened county jails include Grundy County, 2016; Coffee County, 2015 and Bledsoe County, 2011.

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Updated June 28 at 11:17 p.m. with additional information.

<http://www.timesfreepress.com/news/local/story/2017/jun/28/state-orders-rhea-county-jail-fix-overcrowding-problem/435789/>

Amy K Nixon, anixon@gannett.com Published 11:42 a.m. CT July 31, 2017 | Updated 12:47 p.m. CT July 31, 2017

Officials meet to discuss jail overcrowding

Cheatham County officials met with Sheriff Michael Breedlove, members of the Tennessee Corrections Institute and Cope Associates to discuss plans for dealing with the jail's overcrowding issue.



Cheatham County Jail(Photo: Times file photo)

Cheatham County officials met July 24 with Sheriff Michael Breedlove, members of the Tennessee Corrections Institute and Cope Associates to discuss plans for dealing with the jail's overcrowding issue.

At maximum capacity, the jail can hold 116 inmates, but the jail typically holds around 160. Overcrowding in the jail has become such a problem that it recently failed to meet the certification requirements from the Tennessee Corrections Institute (TCI).

Breedlove explained that TCI oversees all the jails in the state. Because the county did not meet certification, they are mandated to make improvements and then report back to the state.

Breedlove said that when he came into office he knew the jail would be one of the main issues that needed addressing. The jail, which was built in 1986, was in disrepair, and Breedlove said that he began giving County commissioners tours of the jail so that they could see the situation for themselves.

Several improvements have been made, said Breedlove. They've redone the sprinkler system and built segregated cells, for example, but there's not much they can do about the overcrowding issue in the current building.

Cope Associates presented three different options to combat the issue. They can build an entirely new justice center, which would move the courtrooms and jail to another location within city limits, as required by law; they can build a new jail structure offsite and keep the courtrooms in the current courthouse; or they can try to make additions to the current building to accommodate the space issues.

Cope Associates projection is that by 2042, the jail will need 300 beds and the county will need seven courtrooms.

Each of the three options comes with its own issues. Finding land in city limits that's big enough and that's not in a flood plain and not near neighborhoods is difficult, explained Amanda Bell of At Home Realty.

A separate jail could technically be built on county land if annexed into the city, but that would add transportation costs. As an example, Breedlove said that last week, 69 inmates were headed to court, which would mean transporting them back and forth between the courthouse and the jail.

And building onto the current property could mean getting boxed in, explained Bob Bass with TCI. That could mean that future growth at the current site will be difficult as needs change over the years.

Why should the county invest in a new jail?

Many have asked why investing money in a new jail is necessary.

TCI officials explained that 70-percent of the county's liability comes from the jail.

In addition, Bass explained that jails need to have programs geared toward rehabilitation, which will hopefully mean less people coming back to jail.

"Jail programs can help reentry efforts," he said. "They can help get people off drugs. What kinds of programs do you have now? Do you even have room for them?"

Breedlove agreed that having such programs were essential, but added the current jail has no room for them. The jail's former library, which is approximately 5-feet-by-8-feet holds AA meetings and serves as a place for inmates

to meet with ministers. "But as far as (other) programs, we don't physically have room," he said. "When you get people into these programs, there's a higher chance of decreasing the chance of that person coming back. We direly need these kinds of programs."

Similarly, on average, about 40 percent of inmates have some kind of mental health issues, explained Breedlove.

"That, in and of itself, is a problem," he said. "We have to help these people, many who are drug sick, get through detox and withdrawals. And we have a nurse, but we have no medical facility where we could put someone and separate them."

Bass explained that people often have a misconception that jails don't house hardened criminals and instead only hold people who have committed minor offenses. Not true, he said, explaining that murderers and rapists are housed in the county jail while they await conviction.

A crowded jail also means additional challenges for the officers who work there, explained Sgt. Bobby Whitt with the Cheatham County Sheriff's Office.

"We try to keep everyone working. We are firm, fair and consistent with them, and we treat them like people," he said.

That's because when problems arise, such as the recent smoke outbreak that required the jail to be evacuated, the officers need the cooperation of the inmates. That cooperation won't come unless there's that relationship with the officers, Whitt said.

What to do next is a work in progress, but Breedlove will need to present a plan of action to the state. TCI representatives encouraged county officials to educate themselves on the issues at hand rather than make any decisions hastily.

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