

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 901.00: COUNTY CORRECTIONAL FACILITIES -- APPLICATION OF STANDARDS

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901.01: Types of Facilities

103 CMR 900.00 through 979.00 shall apply to any correctional facility subject to the control of a sheriff. 103 CMR 900.00 through 979.00 shall not apply to police station houses or lock-ups which provide brief pre-arraignment custody.

901.02: Inspection

The Commissioner or designee shall visit and inspect each county correctional facility to determine compliance with 103 CMR 900.00 through 979.00 at least once every six months. The results of the inspection shall be documented in a draft audit report, which shall be sent from the Commissioner to the Sheriff. The draft report shall be followed by the final audit report.

901.03: Standard Categories

Each standard has a weight of either "required" or "recommended". Required standards, noted by the term "Required" in text, are directly related to conditions or situations of life, health, and safety of any sentenced individual or pre-trial detainee housed in a county correctional facility, employees or the public. There are 34 required standards and without exception, efforts shall be made to meet and maintain these standards. The remaining standards are recommended and the facility should strive to comply. Every effort shall be made to maintain compliance at the level designated by the standards.

901.04: Waivers

(1) Any Sheriff or facility administrator of a county correctional facility in existence on the effective date of 103 CMR 900.00 through 979.00 may apply in writing to the Commissioner for a waiver of one or more standards of 103 CMR 900.00 through 979.00, where existing facilities prevent compliance, and when the following conditions exist:

- (a) non-compliance with the standard does not adversely affect the life, health and safety of staff or inmates or the constitutional operation of the facility; and,
- (b) overall facility programming compensates for conditions resulting in non-compliance with the standard.

(2) The application for waiver shall cite each standard requested to be waived, state the reasons why compliance cannot be achieved, and describe steps to be taken to achieve as nearly as possible through alternative means the purpose of each standard requested to be waived.

(3) Upon receipt of a written application for waiver, the Commissioner shall by written decision expeditiously grant or deny said application. The Commissioner shall grant an application for waiver only where it is found that compliance cannot be achieved and that feasible steps have been designed to achieve as nearly as possible through alternative means the purpose of the standard.

(4) Granted waivers shall be reviewed at least annually by the Commissioner or designee to determine if conditions and circumstances are still existing to justify the waiver.

901.05: Waiver in the Event of Overcrowding Emergency

Any Sheriff of any existing, new, or proposed county correctional facility in which increases in inmate population may prevent compliance with one or more sections of 103 CMR 900.00 through 979.00 may apply in writing to the Commissioner for a waiver of such regulations.

(1) The application for such a waiver shall conform with the requirements set forth in 103 CMR 901.04(2).

(2) The granting or denial of such a waiver shall be governed by the procedures set forth in 103 CMR 901.04(3). The duration of such a waiver shall be at the discretion of the Commissioner.

901.06: Emergency Suspension of Standards

The Sheriff or facility administrator shall have the power to suspend any of 103 CMR 900.00 through 979.00 in the event of an emergency for the duration of said emergency; provided, that:

(1) Only such sections as are directly affected by the emergency may be suspended;

(2) The suspension shall continue no longer than is required by the emergency;

(3) The Sheriff or facility administrator shall immediately notify the Commissioner of the suspension of any regulations; and,

(4) The Sheriff or facility administrator shall within a reasonable period of time send to the Commissioner, or designee, written notification of the suspension of any regulations setting forth the reasons for the suspension. In no event shall such a suspension continue more than five days without a review by the Commissioner, who shall specify a time limitation.

REGULATORY AUTHORITY

103 CMR 901.00: M.G.L. c. 124, § (1), (c), (d) and (q); c. 127, §§ 1A and 1B.