

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 470.000: MAINTENANCE AND CONSTRUCTION OF LOCKUP FACILITIES

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470.001: Purpose

The purpose of 105 CMR 470.000 is to protect the health, safety, and well-being of the occupants of lockup facilities and the general public, by setting the minimum sanitation and construction/design standards for such facilities.

470.002: Authority

105 CMR 470.000 is adopted under the authority of M.G.L. c. 111, §§ 3, 20, 21, and 22 and c. 40, § 36B.

470.003: Citation

105 CMR 470.000 shall be known as 105 CMR 470.000: *Maintenance and Construction of Lockup Facilities*.

470.010: Scope

(A) 105 CMR 470.000 shall apply to all lockup facilities in the Commonwealth regardless of date of construction or location, with the exception of those facilities described in 105 CMR 470.010(B).

(B) The provisions of 105 CMR 470.000 shall not apply to correctional facilities operated by the Department of Corrections or by the counties, nor to detention centers operated by the Department of Youth Services.

470.020: Definitions

As used in 105 CMR 470.000 the following terms shall have the following meanings:

Cell means any room within a lockup used or intended to be used for forced detention of an adult for longer than eight hours until such time as s/he is released, bailed or arraigned. Cell shall also mean a juvenile detention room.

Cell block means the area(s) within the lockup facility designed for the custody of male, female, or juvenile detainees.

Commissioner means the Commissioner of the Department of Public Health or his/her designee.

Department means the Massachusetts Department of Public Health established pursuant to M.G.L. c. 17.

Detainee means a person, having been arrested, or held in protective custody in a lockup. Such person has not been sentenced and is held in the lockup pending arraignment, release or transfer to another facility.

Easily cleanable means readily accessible and of such material and finish, and so fabricated, that residue may be completely removed by normal cleaning methods.

Holding cell means any room within a lockup used or intended for use for forced detention of an adult for not more than eight hours between the time s/he is brought to the facility and is booked or released.

Lockup means those facilities, or parts of facilities, within police station houses or sub-stations or elsewhere that are used for forced detention of individuals taken into custody by authorized law enforcement authorities.

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470.100: Beds

All cells constructed after the effective date of 105 CMR 470.000 shall have for each detainee, a raised platform or bed, which is at least 12 inches off the floor. The bed or platform shall have a minimum dimension of 31 x 72 inches. Said bed or platform shall be securely anchored to the floor and/or wall, and shall be of such design and condition so as to minimize the opportunity for accidental injury or suicide.

470.101: Benches

Each holding cell shall have a bench or benches of at least 24 inches in length for each person said holding cell is designed to hold. They shall be securely anchored to the floor and/or wall, and shall be of such design and condition so as to reduce the opportunity for injury or suicide.

470.102: Bedding

(A) Sufficient blankets shall be provided upon request, to maintain the warmth of any detainee. Supplied blankets shall:

- (1) be fire retardant;
- (2) be maintained in a clean and sanitary condition; and
- (3) be stored out of the cell in closed storage when not in use.

(B) Blankets may be withheld from a detainee who is deemed suicidal, violent, or destructive, and who will not be subject to constant personal supervision.

470.103: Mattresses

Mattresses, if provided, shall be fire retardant and non-toxic.

470.150: Common Cups Prohibited

The use of common drinking cups is prohibited. (M.G.L. c. 111, § 8)

470.151: Disposable Drinking Cups

Only disposable drinking cups shall be provided and they shall be stored in such receptacles or containers so as to prevent contamination.

470.200: Service of Food

When used for the service of food, dishware shall be single service paper. Utensils, if provided, shall be single service. All dishware and utensils shall be disposed of after their use.

470.250: Common Towels Prohibited

The use of a common towel is prohibited. (M.G.L. c. 111, § 8)

470.251: Storage of Disposable Towels

Disposable, single service hand towels shall be provided and stored in such a manner so as to prevent contamination or soiling.

470.300: Night Soil Pots Prohibited

The use of night soil pots is prohibited.

470.301: Detainee Access to Flush Toilet and Handwash Sink

An individual detained in a holding cell or cell that does not contain a flush toilet or handwash sink shall upon request be escorted to and allowed to use a flush toilet and handwash sink which is located in proximity to his/her cell.

470.302: Flush Toilets Required

Every cell constructed after January 1, 1979 shall contain a working flush toilet. Said toilet shall contain a molded, integral seat. The toilet should be flush to the floor and wall. The use of squat toilets is prohibited.

470.303: Handwash Sinks

Every cell constructed after January 1, 1979 shall contain a handwash sink. Each handwash sink shall be connected to running hot and cold water.

470.304: Facilities to be of Sanitary and Safe Design

- (A) Each toilet and handwash sink shall be of sanitary design and easily cleanable.
- (B) All toilet and handwash facilities installed after the effective date of 105 CMR 470.000 should be of stainless steel construction.
- (C) All handwash sinks shall be equipped with push button controls for the control of water. If the flush mechanism for the toilet is located within the cell, a push button flush control mechanism shall be provided.

470.305: Hot Water

Each of the required handwash sinks shall have hot water provided within a range of 110° and 130°F.

407.306: Sewage Disposal

Toilets and handwash sinks shall be connected to a municipal sewage disposal system or to a subsurface sewage disposal system which has been approved by the local board of health in accordance with 310 CMR 15.00: *Subsurface Disposal of Sanitary Sewage (Title V)*.

470.307: Plumbing Fixtures to be Sanitized

Each toilet and handwash sink, and the surrounding area, shall be cleaned daily, when in use, with hot water and an effective detergent disinfectant. It is recommended that a chlorine solution with a 0.5% free chlorine residual be used.

470.308: Floor Drains

- (A) In all lockups constructed after the effective date of 105 CMR 470.000 a floor drain(s) shall be provided. These floor drains shall be located outside of the cells.
- (B) Floor drains should be connected to a drain line separate from the one to which the cells' toilets and wash basins are connected.
- (C) The floor of the cells shall be so sloped that water will flow in the direction of the floor drain(s).

470.309: Installation and Maintenance of Plumbing

- (A) All plumbing shall be installed and maintained in accordance with 248 CMR 2.01 *et seq.* the Massachusetts Plumbing Code.

470.309: continued

(B) In all lockups constructed after the effective date of 105 CMR 470.000, there shall be emergency water supply shut-off valves readily accessible only to the facility staff.

470.310: Potable Water

There shall be a supply of water sufficient in quantity and pressure to meet the ordinary needs of the occupants of the lockup, connected with the public water supply system or with any other source approved by the local board of health.

470.350: Ventilation

(A) Mechanical ventilation shall be provided in accordance with the requirements of 780 CMR *Massachusetts State Building Code*.

(B) In all cells constructed after the effective date of 105 CMR 470.000, exhaust air from the cells shall be ducted to the exterior.

470.351: Ventilation Shut-off

Each mechanical ventilation system in lockups constructed after the effective date of 105 CMR 470.000, shall be equipped with a readily accessible means for either exhaust shut-off or volume reduction for times when the cell block is not in use.

470.352: Heating

Each holding cell and cell shall, during periods of occupancy, be heated to a temperature of at least 65°F every day from October 1 to May 31 inclusive. The temperature shall at no time exceed 78°F during the heating season. The temperature is read at a height of three feet above floor level at any point in the cell more than two feet from any exterior wall.

470.353: Louvers and Grille Work

In lockups constructed after the effective date of 105 CMR 470.000, any grille work or louver in a holding cell or cell shall be so designed and installed as to prevent its use in assisting a detainee in attempting suicide. Particular attention shall be paid to eliminating sharp edges and holes that could be used for tying foreign objects.

470.375: Lighting Required

Lighting shall be provided so that within each holding cell and cell there is a minimum intensity of 20' foot candles at a height of 30" inches above the floor.

470.376: Location of Artificial Light Sources

The light source shall be direct lighting within each holding cell or cell, or indirect lighting from outside the cell with the light focused into the cell.

470.377: Design of Light Fixture

In each holding cell or cell constructed after the effective date of 105 CMR 470.000, direct lighting shall be provided by a light fixture of tamper-proof design, so located as to make it inaccessible to the detainee.

470.400: Location of Cells

The lockup area should be located proximate to the detainees' entrance, and shall be separate from all public areas within the station house.

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470.401: Location of Juvenile Cells

Juvenile detainees shall be located so that they are apart from adult detainees.

470.402: Location of Female Cells

Female detainees shall be separated by sight from male cells.

470.403: Size of Cells

(A) Each single occupancy cell constructed after the effective date of 105 CMR 470.000 shall contain a minimum of 48 square feet of floor area. (60 square feet recommended) In double occupancy cells there shall be a minimum of 80 square feet. Floor to ceiling height shall be at least seven and one half feet. No cell shall be constructed to serve more than two occupants.

(B) Each holding cell constructed after the effective date of 105 CMR 470.000 shall contain at least 70 square feet with a floor to ceiling height of at least seven and one half feet. There shall be 30 square feet of floor space for each additional occupant beyond two.

470.404: Type of Construction

All lockups constructed after the effective date of 105 CMR 470.000 shall be constructed of fire resistive material in accordance with 780 CMR *the Massachusetts State Building Code*.

470.405: Finish of Cell Walls and Ceilings

The walls and ceilings of holding cells and cells shall be a light color and easily cleanable. If painted, the paint shall be non-lead based, and fire retardant.

470.406: Finish of Cell Floors

All floors of holding cells and cells shall be easily cleanable. They shall be surfaced with a non-absorptive finish that is not slippery when wet.

470.407: Bars to be Inaccessible

All cells shall have, in accordance with Massachusetts law (M.G.L. c. 40, § 36B), a protective covering of high impact, transparent plastic over all bar structures accessible to persons detained in a cell. Holding cells and cells constructed after the effective date of 105 CMR 470.000 shall not have any barred structures.

470.408: Cells to Have Audio Devices

In accordance with Massachusetts law (M.G.L. c. 40, § 36B), at least one cell within each cell block shall have installed within it, but beyond the access of any person detained within such cell, an electronic audio system, whereby a police officer or other lockup personnel at the duty desk within such lockup is brought within audible range of such cell. However, no such electronic audio system is required to be installed if at least one cell within each cell block is within audible range of the duty desk without electronic assistance.

470.409: Security Devices

Each lockup shall, in accordance with Massachusetts law (M.G.L. c. 40, § 36B), have installed within each cell block an electronic security device which will record the times of cell checks by police officers or other lockup personnel. Such device shall be positioned so that a cell check cannot be recorded until the police officer or other personnel has walked past each occupied cell.

470.410: Asbestos

There should be no friable asbestos present in any lockup.

470.411: Storage of Materials

Holding cells, cells and cell blocks shall not be used for the storage of combustible or toxic materials.

470.430: Smoke Detector System

Each lockup shall have an automatic smoke detector system in accordance with 780 CMR *the Massachusetts State Building Code*.

470.440: Evacuation Plan

Each lockup should have a written evacuation plan which specifies the route of evacuation, and subsequent disposition and housing of detainees.

470.450: Removal of Clothing

Individuals placed in a holding cell or cell, who are deemed suicidal, violent, or self-destructive and who will not be subject to constant, personal supervision shall be relieved of articles of clothing or personal belongings which could be used for the purpose of attempting suicide. These articles shall include, but are not necessarily limited to, shoe laces, neckties, scarves, belts, socks, ribbons, matches and cigarette lighters.

470.500: Inspections

(A) Inspection Authority. In order to properly carry out its responsibility under 105 CMR 470.000 and to properly protect the health and well-being of the citizens of the Commonwealth, the Department or its authorized agent is authorized to enter, examine, or survey at any reasonable time such lockups as it considers necessary.

(B) Inspection Frequency. The Department shall inspect each lockup at least once a year.

470.510: Inspection Reports

(A) The Department shall file a report of its findings and recommendations with respect to the compliance of each lockup with 105 CMR 470.000, with the chief executive officer of the appropriate municipality or state agency.

(B) Copies of the report shall also be sent by the Department to the Secretary of Human Services, the appropriate chief of police or other superintendent or administrator of the lockup, and the General Court.

470.520: Plan of Correction

The chief executive officer of a municipality or state agency shall respond to a notice of non-compliance with a plan of correction within 21 days of receipt of said notice of non-compliance. The plan of correction shall indicate what action has been, or will be taken to correct the areas of non-compliance. If corrections have not already been made, an estimated date of correction shall be provided.

470.600: Hearings

(A) If the Commissioner determines that the plan of correction is inadequate to protect the health and well-being of a citizen of the Commonwealth, or if no plan of correction is received within the required time, he/she may cause a public hearing to be held. The notice of hearing shall be sent by the Department to the chief executive officer of a municipality or state agency not later than 21 days after the plan of correction is or should have been received by the Department.

(B) At the hearing the executive officer(s) of the municipality or the appropriate state agency or their designee(s) shall be given an opportunity to be heard and to show why the lockup should not be closed.

(C) Within 14 days after the hearing, the Commissioner shall make a determination as to whether the subject lockup shall be closed and shall inform the municipality or state agency of his/her decision in writing. If closure is ordered, the lockup shall remain closed until it is found to be in compliance with 105 CMR 470.000 and receives written notification from the Department to that effect.

470.700: Judicial Review

Any person aggrieved by the final decision of the Commissioner with respect to the closure of any lockup may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the Commonwealth.

470.800: Construction Approval Required

(A) No lockup shall be built or renovated until the Department has approved, in writing, the plans for the provisions for lighting, heating, ventilation and plumbing, the dimensions and form of construction and the location of the cells.

(B) For approval, the municipality or state agency shall submit to the Department two copies of the stamped architectural and mechanical drawings and one copy of the specifications showing the provisions for lighting, heating, ventilation and plumbing, sewage disposal, the dimensions and form of construction and the location of the cells. The mechanical engineer shall certify, in writing, that the ventilation design will provide the required number of air changes per hour in each cell.

(C) Any lockup which fails to comply with the provisions of 105 CMR 470.800 may be ordered to close by the Commissioner until the Department has approved the plans and has inspected the lockup.

470.850: Variances

(A) The Commissioner may vary the application of any provision of 105 CMR 470.000 with respect to any particular case when, in his/her opinion, the enforcement thereof would do manifest injustice, provided that the decision of the Commissioner shall not conflict with the spirit of these standards. Any variance granted shall be in writing. A copy of such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town or appropriate state agency for which it is granted.

(B) Any variance may be subject to such qualification, revocation, suspension, or expiration as the Commissioner expresses in his/her grant.

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470.900: Severability

If any section, paragraph, sentence, clause, phrase or word of 105 CMR 470.000 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 105 CMR 470.000, which shall remain in full force and effect; and to this end the provisions of 105 CMR 470.000 are hereby declared severable.

REGULATORY AUTHORITY

105 CMR 470.000: M.G.L. c. 111, § 3, 20, 21 and 22; M.G.L. c. 40, § 36B.