WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Jail & Correctional Facility Standards Commission TITLE NUMBER: 95CSR1

CITE AUTHORITY §31-20-9

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 95CSR1

TITLE OF RULE BEING AMENDED: Minimum Standards For Construction, Operation, And Maintenance Of Jails

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

16-90

STATEMENT OF CIRCUMSTANCES:

Be it resolved that the West Virginia Minimum Standards For Construction, Operation, And Maintenance Of Jails 95CSR1, as amended, be amended as follows:

10.1 Responsibility. Jail authorities shall maintain the facility in a condition that is clean, healthful and sanitary, and which conforms to all applicable health laws and regulations. The use and possession of tobacco, tobacco products and tobacco-like products shall be prohibited in all jail facilities and all facilities jointly operated by the Regional Jail and Correctional Facility Authority and the Division of Corrections.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Minimum Standards For Construction, Operation, And Maintenance Of Jails

Type of Rule: X **Legislative** ____ **Interpretive** ____ **Procedural**

Agency Jail & Correctional Facility Standards Commission

Address 307 Jefferson Street

Charleston, West Virginia 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 90,000.00	$ 0	$ 90,000.00	$ 105,000.00
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	50,000.00	0	50,000.00	50,000.00
REPAIRS & ALTERNATIONS	0	40,000.00	0	40,000.00	55,000.00
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

Savings in current expense would result from avoidance of maintenance and repair of electrical cigarette lighters and reduced maintenance costs. Savings in repairs and alterations would result from increased life of paint and avoidance of repainting cost of smoke soiled walls, ceilings, and other surfaces.

3. Objectives of these rules:

To improve the environmental conditions of regional jails and to increase the life expectancy of regional jail facilities. Since our population is short-term, the prohibition of tobacco products would not have a major impact upon the personal health of our inmates, but may result in the prevention of tobacco related diseases in some inmates.

Rule Title: Minimum Standards For Construction, Operation, And Maintenance Of Jails

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Savings in maintenance and repair of regional jail facilities

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Savings resulting from the implementation of this policy will be passed on to the counties and other user agencies through avoidance of increased per diem costs.

C. Economic Impact on Citizens/Public at Large.

Not determined

Date: 6-30-95

Signature of Agency Head or Authorized Reprensentative

Jack Royer

DATE: July 31, 1995

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: Jail & Correctional Facility Standards Commission

LEGISLATIVE RULE TITLE: 95CSR1 Minimum Standards For Construction, Operation, And Maintenance Of Jails

1. **Authorizing statute(s) citation** §31-20-9

2. a. **Date filed in State Register with Notice of Hearing**

   6/30/95 public comment period

   b. **What other notice, including advertising, did you give of the hearing?**

   Notice to Jail Authority at July meeting

   c. **Date of Hearing(s)** Comment

   d. **Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.**

   Attached X **No comments received** _____

   e. **Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**

   7/31/95

   f. **Name and phone number(s) of agency person(s) to contact for additional information:**

   Frank G. Shumaker, Deputy Director

   558-2110

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

      Not applicable

   b. Date of hearing: Not applicable

   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

      Not applicable

   d. Attach findings and determinations and reasons:

      Attached Not applicable

SUMMARY:

It is the responsibility of jail authorities to maintain facilities in a condition which are clean, healthful and sanitary, and the use or possession of tobacco, tobacco products or tobacco-like products in jail facilities is not conducive to the maintenance of clean, healthful and sanitary facilities.

Improving the environmental conditions of regional jails would reduce maintenance costs; and, may result in the prevention of tobacco related diseases in some inmates.

LEGISLATIVE RULES
JAIL AND ~~PRISON~~ CORRECTIONAL FACILITY STANDARDS

SERIES 1
WEST VIRGINIA MINIMUM STANDARDS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF JAILS

§95-1-1. General.

1.1. Scope. -- This legislative rule establishes minimum standards and procedures for new jail facilities completed after the fifth day of April, one thousand nine hundred eighty-eight, and shall serve only as guidelines for jail facilities that were in operation prior to fifth day of April, one thousand nine hundred eighty-eight.

1.2. Authority. -- W. Va. Code §31-20-9

1.3. Filing date. -- June 30, 1995

1.4. Effective date. --

1.5 Repeal of Former Rule. -- November 2, 1993

§95-1-2. Administration, Organization, And Management.

2.1. Philosophy, goals and policies. A written statement shall be prepared by the authority having jurisdiction that describes the philosophy, goals and policies of the facilities under its control, and which is reviewed annually and updated as necessary. This statement is made available to staff, inmates and the general public.

2.2. Jail administrator. The jail shall be managed by a single administrator to whom all employees or units of management are responsible.

2.3. Appointment. The facility administrator shall be appointed by the chief executive officer or governing board of the authority having jurisdiction.

2.4. Qualifications. The educational, operational and administrative qualifications of the facility administrator shall be stated in writing and include, at a minimum, a bachelor's degree and/or three years of experience and training at the supervisory level.

2.5. Term. The term of the facility administrator shall be continuous, except for assignment to a position of equal responsibility, and may be terminated by the appointing authority only for good cause, and if requested, subsequent to a formal and open hearing on specific charges.

2.6. Outside agencies. There shall be policy which is reviewed annually which specifies the roles and functions of employees of other agencies providing a service to the facility.

2.7. Organizational subunits. There shall be a written plan with an organizational chart which describes the facility organization and groups similar functions, services and activities into administrative subunits. This plan shall be reviewed at least annually and updated as needed.

2.8. Operations manual. There shall be a written operations manual that delineates the procedures for operating and maintaining the facility. The manual shall be made available to employees, reviewed annually and updated as needed.

2.9. Legal assistance. Legal assistance shall be available to the administrator and other staff as needed in the performance of their duties.

2.10. Authority to release. When the facility is designated to operate any type of pretrial intervention service or other release program, its authority and responsibility is stated by statute or administrative regulation.

§95-1-3. Fiscal Management.

3.1. Budgetary system. The budgetary system shall link operations and activities to the cost necessary for their support.

3.2. Fiscal system. The fiscal system shall account for all income and expenditures on an ongoing basis.

3.3. Accounting procedures. The methods used for collection, safeguarding and disbursement of monies shall comply with accounting procedures established by the appropriate jurisdiction.

3.4. Minimum policies. The facility shall have written policies and procedures approved by the parent agency that includes, at a minimum:

a. Internal controls;

b. Petty cash procedures;

c. Bonding for all appropriate staff;

d. Signature control on checks;

e. Handling of inmate funds;

f. Employee expense reimbursement; and

g. Issuance or use of vouchers.

3.5. Audit. The facility or parent agency fiscal process shall include an annual external financial audit of the facility at time periods stipulated by applicable statutes and/or regulations.

3.6. Inventory. There shall be inventory control of property, stores and other assets. Such inventories are conducted at time periods stipulated by applicable statutes, however, they should not exceed every two (2) years.

3.7. Insurance coverage. Each facility shall have insurance coverage which includes, at a minimum: Worker's compensation, civil liability, liability for official vehicles, and public employee blanket bond.

3.8. Personnel assessment. Budget policy and procedure shall provide for an annual assessment of presently assigned positions and future personnel needs required to meet facility objectives.

§95-1-4. Personnel.

4.1. Selection, retention, and promotion. The selection, retention, and promotion of all personnel shall be on the basis of merit and specified qualifications.

4.2. Psychological testing. All jail personnel who have direct contact with inmates shall undergo psychological testing prior to their employment and when a justifiable need exists during their employment, to determine suitability for appointment and retention. The testing shall include, but not necessarily be limited to, measurements of basic attitudes and tendencies toward honesty and against unprovoked acts of personal violence and shall be administered, scored and interpreted by, or under the supervision of, a licensed psychologist.

4.3. Affirmative action. A program of affirmative action and equal employment opportunities shall exist.

4.4. Criminal record check. In accordance with state and federal statutes, a criminal record check and complete background investigation shall be conducted on all new employees to ascertain whether there are criminal convictions and other information which has a specific relationship to job performance.

4.5. Physical examination. A physical examination of all employees by a physician at the time of employment shall be required. Provision shall exist for reexamination when indicated.

4.6. Probationary employees. There shall be a procedure governing probationary employment. New or promoted employees are appointed initially for a probationary term of one year. After

successful completion of the initial probationary period, employees shall be granted permanent status.

4.7. Job classification. A job classification or post audit system shall exist which is linked to the salary and benefit compensation plan.

4.8. Personnel policy manual. There shall be a personnel policy manual. A copy of this manual shall be available to each employee, explained at employee orientations, and a signed statement shall be obtained from each employee, to be kept in the personnel file, certifying his or her understanding of the manual and its contents. The manual shall include, at a minimum, the following areas:

a. Organizational structure;

b. Recruitment and selection procedures;

c. Equal employment opportunity provisions;

d. Job qualifications, descriptions and responsibilities;

e. Job classification plan;

f. Wage and benefit plan;

g. Holidays, leave and work hours;

h. Policies and procedures related to personnel records;

i. Performance evaluation procedures;

j. Promotion, retirement, resignation, layoff and termination procedures;

k. Employee-management relations;

l. Physical fitness policy;

m. Disciplinary procedures;

n. Grievance and appeal procedures; and

o. Insurance and professional liability provisions.

4.9. Conflict of interest. Employees shall be prohibited from using their official position to secure privileges for themselves or others and from engaging in activities that constitute a conflict of interest.

4.10. Disciplinary investigations. A staff person charged with alleged maltreatment of an inmate shall not work directly with any inmate until an investigation is completed.

4.11. Disciplinary actions. Employees on permanent status shall be terminated or demoted only for just cause and after grievance and appeals procedures, if requested, have been exhausted.

4.12. Annual evaluation. A written performance evaluation of all employees, based on defined criteria related to job performance shall be provided at least annually. The evaluation shall bear a direct relationship to the skills, knowledge areas, aptitudes and personal characteristics defined in the job description. Employees shall review and discuss the performance evaluation with the person who completes it. If employees disagree with the evaluation, they shall have the opportunity to express their opinions in writing; their statements shall be included in their personnel files.

4.13. Transfer, assignment and selection. Procedure shall provide for the transfer, assignment and selection of employees on the basis of facility need and the ability of the employee to perform the job.

4.14. Emergency Medical Technician. There shall be at least one medically trained employee of at least emergency medical technician licensure, available at all times on each shift. (See standard 14.13 also)

4.15. Provisional appointments. Resources shall provide for provisional appointments and/or reserve correctional officers to ensure the availability of trained personnel for short-term, full-time or part-time work in special or emergency situations.

4.16. Personnel records. The facility administrator or parent agency shall maintain a current, accurate and confidential personnel record for each employee.

4.17. Record confidentiality. Written policy and procedure shall provide for the confidentiality of the personnel record and restrict its availability to the employee who is the subject of the record, to administrators and supervisors directly responsible for the employee, and to other personnel who need the information for the performance of their duties.

4.18. Record correction. Provision shall be available for employees to challenge all information in their personnel file and establish a process for correction or removal of inaccuracies.

§95-1-5. Training And Staff Development.

5.1. Program supervision. The facility's training programs

for all employees shall be specifically planned, coordinated, and supervised by a qualified employee at a supervisory level; in a facility of over one hundred (100) employees, this person shall be employed full time for this purpose.

5.2. Supervisory training. The individual coordinating the training and staff development program shall receive specialized training for that position.

5.3. Training curriculum. A training curriculum shall be developed, evaluated, and updated based on an annual needs assessment that identifies current job-relating training needs. The Regional Jail and ~~Prison Authority~~ Correctional Facility Authority shall be the approving agency.

5.4. Trainer certification. Any individual providing preservice, in-service or basic training for correctional staff shall be certified as a correctional trainer by the Regional Jail and ~~Prison Authority~~ Correctional Facility Authority.

5.5. Outside resources. The training and staff development program shall use the resources of other public and private agencies, private industry, colleges, libraries and reference services to complement the program.

5.6. Budget. The budget shall include funds for compensating staff for additional time spent in training, or for replacement personnel required when regular personnel are off duty for training purposes.

5.7. New clerical/support employees. All new clerical/support employees who have minimal inmate contact shall receive at least forty (40) hours of orientation and approved training during their first year of employment. Twenty-four (24) of these hours shall be completed prior to being independently assigned to a particular job. All persons in this category shall be given at least an additional eight (8) hours of training each subsequent year of employment. The Regional Jail and ~~Prison Authority~~ Correctional Facility Authority shall be the approving agency.

5.8. New support employees. All new support employees who have regular daily inmate contact shall receive at least forty (40) hours of orientation and approved training during their first year of employment. Twenty-four (24) of these hours shall be completed prior to being independently assigned to a particular job. They shall be given at least an additional sixteen (16) hours of training each subsequent year of employment. The Regional Jail and ~~Prison Authority~~ Correctional Facility Authority shall be the approving authority. At a minimum, this training shall cover the following areas:

a. Security procedures and regulations;

b. Rights and responsibilities of inmates;

c. All emergency procedures;

d. Interpersonal relations;

e. Communication skills; and

f. First aid.

5.9. New correctional officers. All new correctional officer personnel shall receive at least one hundred twenty (120) hours of approved orientation and training during their first year of employment. The Regional Jail and ~~Prison Authority~~ Correctional Facility Authority shall be the approving agency. Forty (40) of these hours shall be completed prior to being independently assigned to a particular post. All persons in this category shall be given an additional forty (40) hours of training each year thereafter. At a minimum, this training covers the following areas:

a. Security and search procedures;

b. Use of force regulations and tactics;

c. Supervision of inmates;

d. Report writing;

e. Inmate and staff rules and regulations;

f. Rights and responsibilities of inmates;

g. All emergency procedures;

h. Interpersonal relationships;

i. Social/cultural life style of the inmate population;

j. Communication skills; and

k. First aid.

5.10. Administrative and managerial staff. The facility's administrative and managerial staff shall receive at least forty (40) hours of orientation if they are new to the facility and at least eight (8) hours of management training each year thereafter. This training shall cover, at a minimum, the following:

a. General management and related subjects;

b. Decision-making processes;

c. Labor law, employee-management relations;

d. The interaction of elements of the criminal justice system; and

e. Relationships with other service agencies.

5.11. Emergency unit. When there is an emergency unit, all assigned officers shall receive forty (40) hours relevant emergency unit training prior to assignment.

5.12. Weaponry and chemical agents. All personnel authorized to use firearms or chemical agents shall be trained in weaponry and the use of chemical agents on a continuing, in-service basis, and are required to qualify annually.

5.13. Security personnel. All security personnel shall be trained in approved methods of self-defense and the use of force, including passive restraint, to control inmates.

5.14. Continuing education. The facility administration shall encourage employees to continue their education and provide reimbursement to employees attending professional meetings, seminars and similar work-related activities as approved by the administrator.

§95-1-6. Management Information And Research.

6.1. System of information. The facility shall contribute to, have access to, and use an organized system of information storage and retrieval relative to both inmate and operational needs.

6.2. Security. Procedure shall govern the security of the information and data collection system, including certification, access to data, and protection of the privacy of all inmates under the jurisdiction of the agency.

6.3. Collaboration. The facility or its parent agency shall collaborate with criminal justice and service agencies in information gathering, exchanges and standardization.

6.4. Inmate population accounting. There shall be an inmate population accounting system which includes records on the admission, processing and release of inmates.

6.5. Annual evaluation. There shall be at least annual evaluations of facility programs and services to determine progress toward achieving previously identified objectives.

6.6. Research. Written policy and procedure governing the conduct of research shall comply with state and federal guidelines for the use and dissemination of research findings and with accepted professional scientific ethics.

6.7. Inmate participation. Written policy and procedure shall govern voluntary inmate participation in nonmedical, nonpharmaceutical and noncosmetic research.

§95-1-7. Inmate Records.

7.1. Booking. Inmate booking information shall be recorded for every person admitted to the facility and includes at least the following data, unless prohibited by law:

a. Fingerprints;

b. Picture;

c. Booking number;

d. Name and aliases of person;

e. Current address (or last known address);

f. Date, duration of confinement, and copy of court order or other legal basis for commitment;

g. Name, title and signature of delivering officer and arresting officer;

h. Specific charge(s);

i. Sex;

j. Age;

k. Date of birth;

l. Place of birth;

m. Race;

n. Present or last place of employment;

o. Health status, including any current medical or mental health needs;

p. Emergency contact (name, relationship, address and phone number);

q. Telephone calls made by the inmate at time of

admission;

r. Driver's license and social security numbers;

s. Notation of case and all property; and

t. Additional information concerning special custody requirements, service needs, or other identifying information such as birthmarks or tattoos.

7.2. Case record management. Case record management shall include, but is not limited to, the establishment, utilization, content, privacy, security and preservation of records, and a schedule for the retirement or destruction of inactive case records. These procedures are reviewed annually.

7.3. Custody records. The facility shall maintain custody records on all inmates committed or assigned to the facility, that contain, but are not limited to, the following:

a. Intake/booking information;

b. Court generated background information;

c. Cash and property receipts;

d. Reports of disciplinary actions, incidents or crime(s) committed while in custody; and

e. Records of program participation, including work release or trusty program and "good time" accumulated.

7.4. Format. The contents of inmate records shall be identified and separated according to an established format.

7.5. Case records. A current and accurate classification or case record shall be maintained for each inmate committed to or housed in the facility. Procedures shall be established to safeguard legally privileged or confidential information. The records shall contain, at a minimum the following:

a. Classification and reclassification decisions;

b. Report of disciplinary actions, grievances, incidents and crimes while in custody;

c. Medical and mental health information relevant to the classification; and

d. Information on work or study release when applicable.

7.6. Identification system. The facility shall maintain a

system which identifies all inmates in custody and their actual physical location.

7.7. Access to records. Those persons within the facility and other authorized persons who have direct access to inmate classification or case records shall be defined.

7.8. Release of information. The administration shall use a consent form which complies with applicable federal and state regulations. The inmate shall sign a "Release of Information Consent Form" prior to the release of information, as required by statute or regulation, and a copy of the form shall be maintained in the inmate's case record.

§95-1-8. Physical Plant.

8.1. General. All new jails shall be designed, constructed, maintained and operated in accordance with the standards and requirements set out and established by the State Fire Code, including the current edition of the National Fire Code published by the National Fire Protection Association and the current BOCA National Building Code published by Building Official and Code Administrators International, Inc. (BOCA). In any conflict between or among any of the aforementioned standards, the West Virginia State Fire Code shall be preeminent.

Standards and Regulations. All existing jails shall comply with the standards and regulations set forth for existing facilities in the State Fire Code, the current National Fire Codes published by the National Fire Protection Association (NFPA).

8.2. Safety of occupants. Because the safety of all occupants in all detention and correctional facilities cannot be adequately assured solely by a dependence upon evacuation from the building, their protection from fire shall be provided by appropriate arrangement of facilities, an adequately trained staff, and careful development of operating, security, and maintenance procedures to include the following:

a. Proper design, construction and compartmentalization;

b. Provisions for fire detection, alarms and extinguishment;

c. Fire prevention programs which include planning, training, and drills covering such protective activities as: Isolation of the fire; transfer of occupants to areas of refuge; evacuation of the facility; or measures for in-place protection of the occupants; and

d. Security provisions to the degree necessary to provide for the safety of both the occupants of the facility and

the general public.

8.3. State Fire Marshal review. Plans and specifications for all new facilities shall be submitted to the State Fire Marshal for review prior to the start of construction.

8.4. State Fire Marshal certificate. No facility shall be occupied until a certificate of occupancy is issued by the State Fire Marshal's office.

8.5. Activity areas. All activity areas shall have sufficient air circulation (at least ten (10) cubic feet of fresh, purified air per minute per occupant), lighting and sanitary facilities. These areas include multipurpose rooms, recreation areas for inmates, or work areas for staff. Temperatures shall be maintained appropriate to the summer and winter comfort zones with consideration for the activity performed.

8.6. Inmate booking and release area. The inmate booking and release area shall be located inside the security perimeter, but outside inmate living quarters, and have the following facilities:

a. Booking area;

b. Sally port;

c. Access to drinking water;

d. Shower facilities;

e. Secure storage for inmate's personal property;

f. Telephone facilities;

g. Private interview space(s);

h. Temporary holding rooms with sufficient fixed seating for all inmates at its rated capacity; and

i. Operable toilets and wash basins.

8.7. Single occupancy. Only one inmate shall occupy a cell or detention room designed for single occupancy.

8.8. Floor space. All single rooms or cells in detention facilities shall have at least seventy (70) square feet of floor space.

8.9. Environment. All rooms or cells shall have access to the following facilities and/or conditions;

a. Toilet above floor level which is available for use

without staff assistance twenty-four (24) hours a day;

b. Wash basin and drinking water;

c. Hot and cold running water;

d. A bed at above floor level, desk or writing surface, hook or closet space, appropriate seating;

e. Lighting of at least twenty (20) foot candles at desk level and in the personal grooming areas. (In additions to existing facilities and in new plants, the lighting is both inmate and centrally controlled);

f. Circulation is at least ten (10) cubic feet of outside or recirculated air per minute per occupant;

g. Temperatures are appropriate to the summer and winter comfort zones;

h. Noise levels do not exceed seventy (70) decibels in daytime and forty-five (45) decibels at night; and

i. Natural lighting.

8.10. Multiple occupancy. Where used, multiple occupancy rooms shall house no less than four (4) and no more than fifty (50) inmates each. Inmates shall be screened prior to admission for suitability to group living. Multiple occupancy rooms shall provide for:

a. Continuing observation by staff;

b. A minimum floor area of fifty (50) square feet per occupant in the sleeping area and a clear floor to ceiling height or not less than eight (8) feet;

c. Toilet and shower facilities at a minimum of one operable toilet and shower for every eight (8) occupants;

d. One operable wash basin with hot and cold running water for every six (6) occupants;

e. Natural lighting;

f. Beds above floor level, desk or writing surface, appropriate seating;

g. A locker for each occupant;

h. Lighting is at least twenty (20) foot candles at desk level and in the personal grooming area;

i. Circulation is at least ten (10) cubic feet outside or recirculated air per minute per occupant;

j. Temperatures are appropriate to the summer and winter comfort zones; and

k. Noise levels do not exceed seventy (70) decibels in daytime and forty-five (45) decibels at night.

8.11. Segregation rooms. Segregation room shall provide living conditions that approximate those of the general inmate population. Any exceptions shall be clearly documented. Segregation housing units shall provide for the following:

a. Single occupancy rooms or cells with a floor area of at least seventy (70) square feet;

b. A bed above floor level, desk or writing space and appropriate seating;

c. Continuous access to above floor toilet facilities;

d. Hot and cold running water;

e. Natural light;

f. Lighting with at least twenty (20) foot candles at desk level and in the personal grooming area;

g. Circulation with at least ten (10) cubic feet outside or recirculated, filtered air per minute per occupant;

h. Temperatures shall be appropriate to the summer and winter comfort zones; and

i. Noise levels will not exceed seventy (70) decibels in daytime and forty-five (45) decibels at night.

8.12. Communication. A room used for segregation shall permit inmates assigned to it to communicate with staff and have a door which permits observation by staff.

8.13. Continuing staff observation. When seriously ill, mentally disordered, injured or nonambulatory inmates are held in the facility, there shall be at least one single-occupancy cell or room for them which provides for continuing staff observation.

8.14. Sleeping quarters. When both males and females are housed in the same facility, they shall be provided separate sleeping quarters which are separated visually and acoustically.

8.15. Perimeter security. The security perimeter shall be

secured in a way which provides that inmates remain within the perimeter and that access by the general public is denied without proper authorization.

8.16. Storage security. Space shall be provided for the secure storage of chemical agents, restraining devices and related security equipment and the equipment shall be located in an area which is readily accessible to authorized persons only.

8.17. Sally ports. There shall be sally ports between inmate areas and areas providing access to the public.

8.18. Day room. There shall be a separate day room leisure time space for each cell block or detention room cluster, with space equivalent to a minimum of thirty-five (35) square feet per inmate.

8.19. Exercise areas. Space outside the cell or room shall be provided for inmate exercise. Indoor and outdoor exercise areas shall be secure and available to all inmates. Outdoor areas shall have adequate space and equipment to permit regular outdoor sports activities. For facilities with over one hundred (100) inmates, this area shall be increased in proportion to the inmate population and shall contain a variety of equipment. Indoor exercise programs may be conducted in a multipurpose room or dayroom: Provided, That the space is available and the location is acceptable. Indoor space is an area in which lighting, temperature and ventilation is artificially controlled.

8.20. Kitchen. When the facility provides food service, the kitchen shall have a minimum of two hundred (200) square feet of floor space.

8.21. Employee space. Consistent with the size of the facility, space shall be provided for administrative, professional and clerical staff, including conference rooms, employee lounge, storage room for records, public lobby and toilet facilities.

8.22. Multipurpose room. There shall be at least one multipurpose room available for inmate activities such as religious services, education programs, or visiting.

8.23. Janitor closet. A room or closet equipped with a sink shall be provided for the storage of cleaning supplies and equipment.

8.24. Storage space. Storage space shall be provided for clothing, bedding and facility supplies.

8.25. Storage of personal property. Space shall be provided for the secure storage of inmates' personal property.

8.26. Maintenance and repairs. There shall be a written plan for preventive maintenance of the physical plant with provisions for emergency repairs or replacement of equipment. This plan shall be reviewed annually and updated if needed.

8.27. Accessibility. The facility shall be geographically accessible to criminal justice agencies, community agencies and inmate's lawyers, families and friends.

8.28. Layout. The facility shall be designed and constructed so that inmates can be separated according to existing laws and regulations, or according to the facility's classification.

8.29. Handicapped inmates. Handicapped inmates shall be housed in a manner which provides for their safety and security. Cells or housing units used by them are designed in accordance with the American National Standards Institute (ANSI) Standard A117, and provide the maximum possible integration with the general population. Appropriate institution programs and activities are accessible to handicapped inmates confined in the facility.

8.30. Handicapped visitors. All parts of the facility which are accessible to the public shall be accessible to and usable by handicapped persons.

§95-1-9. Safety And Emergency Procedures.

9.1. Policies and procedures. Written policies and procedures shall be adopted specifying the facility's fire prevention regulations and practices. For purposes of clarification and identification these procedures and standards of fire prevention are divided into two (2) classifications:

a. General requirements applicable to all occupancies covered by the State Fire Code; and (b) Specific detention and correctional occupancies.

9.2. General requirements. The following includes the general requirements applicable to all occupancies covered by the State Fire Code.

a. Construction, repair and improvement operations. Adequate escape facilities shall be maintained at all times in buildings under construction for the use of construction workers. Escape facilities shall consist of doors, walkways, stairs, ramps, fire escapes, ladders or other approved means or devices arranged in accordance with the general principles of the State Fire Code insofar as they can reasonably be applied to buildings under construction. Please refer to Standard on Building Construction and Demolition Operations, NFPA 241. Flammable or explosive substances or equipment for repairs or alternations may be introduced in a building of normally low or ordinary hazard

classification while the building is occupied only if the conditions of use and safeguards provided are such as not to create any additional danger or handicap to egress beyond the normally permissible conditions in the building.

b. Reliability of means of egress. Every required exit, exit access or exit discharge shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

c. Furnishings and decorations. Furnishings and decorations in the means of egress shall be subject to the following:

A. No furnishings, decorations, or other objects shall be so placed as to obstruct exits, access thereto, egress therefrom, or visibility thereof;

B. Hangings or draperies shall not be placed over exit doors or otherwise located as to conceal or obscure any exit. Mirrors shall not be placed in or adjacent to any exit in such a manner as to confuse the direction of exit; and

C. There shall be no obstruction by railing, barriers, or gates that divide the open space into sections appurtenant to individual rooms, apartments, or other uses. Where the authority having jurisdiction finds the required path of travel to be obstructed by furniture or other movable objects, he may require that railings or other permanent barriers be installed to protect the path of travel against encroachment.

d. Equipment maintenance and testing. Equipment maintenance and testing shall include the following:

A. Every required automatic sprinkler system, fire detection and alarm system, exit lighting, fire door, and other item of equipment required by these standards shall be continuously maintained in proper operating condition;

B. Any equipment requiring test or periodic operation to assure its maintenance shall be tested or operated as specified elsewhere in these standards or as directed by the authority having jurisdiction;

C. Systems shall be under the supervision of a responsible person who shall cause proper tests to be made at specified intervals and has general charge of all alterations and additions;

D. Systems shall be tested at intervals recommended by the appropriate standards listed in the National Fire Protection Association (NFPA) Fire Code;

E. Automatic sprinkler systems. All automatic sprinkler systems required by these standards shall be continuously maintained in operating condition at all times, and such periodic inspections and tests shall be made as are necessary to assure proper maintenance; and

F. Alarm and fire detection systems. Fire alarm signaling equipment shall be restored to service as promptly as possible after each test or alarm and shall be kept in normal condition for operation.

e. Furnishings, decorations and treated finishes. Furnishings, decorations and treated finishes shall be subject to the following:

A. Draperies, curtains and other similar furnishings and decorations shall be flame resistant where required by the applicable provisions of the State Fire Code. The materials required herein are to be tested in accordance with Standard Method of Fire Tests for Flame Resistant Textiles and Films, NFPA 701 and shall comply with both the small and large-scale tests;

B. Furnishings or decorations of an explosive or highly flammable character shall not be used; and

C. Fire retardant paints or solutions shall be renewed at such intervals as necessary to maintain the necessary flame retardant properties.

f. Fire exit drills. Fire drills shall be subject to the following:

A. Fire exit drills conforming to the provisions of the State Fire Code shall be regularly conducted in occupancies where specified by the provisions of the Code;

B. Fire exit drills, where required by the authority having jurisdiction, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine;

C. Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership;

D. In the conduct of drills emphasis shall be place upon orderly evacuation under proper discipline rather than upon speed;

E. Drills shall include suitable procedures to make sure all persons in the building, or all persons subject to the drill, actually participate; and

F. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions prevalent in case of fire.

9.3. Detention and correctional occupancies. The following includes requirements specifically directed to detention and correctional occupancies.

a. Attendants, evacuation plan, fire exit drills. Attendants, evacuation plan, and fire exit drills shall include the following:

A. Detention and correctional facilities, or those portions of facilities having such occupancy, must be provided with twenty-four (24) hour staffing on any floor level having residency and located within one hundred (100) feet (30.48m) of the accessway to any housing area. Under Use Conditions III, IV and V, as defined in the NFPA Life Safety Code for classification of correctional occupancies, audio monitoring shall be provided for every sleeping space;

B. The administration of every detention and correctional facility shall have in effect and provided to all supervisory personnel, written copies of a plan for the protection of all persons in the area in event of fire and for their evacuation to areas of refuge and from the building where necessary. All employees shall be periodically instructed and kept informed respecting their duties under the plan;

C. Books, clothing and other combustible personal property allowed in sleeping rooms shall be stored in closeable metal lockers or fire resistant containers; and

D. The amount of heat producing appliances (such as toasters, hot plates, etc.) and the overall use of electrical power within a sleeping room shall be controlled by facility administration.

b. Furnishings and decorations. Furnishings and decorations shall be subjected to the following:

A. Furnishings and decorations in detention and correctional occupancies shall be in accordance with the provisions of the NFPA Life Safety Code operating features;

B. Combustible decorations are prohibited in any detention or correctional occupancy unless flame retardant;

C. Wastebaskets and other waste containers shall be of noncombustible or other approved materials;

D. Furnishings, such as mattresses and upholstered

or cushioned furniture shall not be of a highly flammable character; and

E. Window draperies, curtains for decoration or acoustical purposes and privacy curtains shall be noncombustible or rendered and maintained flame resistant as per Standard Method of Fire Tests for Flame Resistant Textiles and Films, NFPA 701.

c. Keys. All keys necessary for unlocking doors installed in means of egress shall be individually identified by both touch and sight.

d. Storage of flammable, toxic and caustic material. Written policy and procedure shall govern the storage and use of all flammable, toxic, and caustic material ensuring that inmates are never in possession of items such as lye, insecticide, anti-freeze and denatured alcohol, unless they are under constant supervision by qualified personnel. Such material shall be stores in secure areas that are inaccessible to inmates; a prescribed system shall be used to account for their distribution.

e. Fire and safety officer. A staff member with appropriate training shall be appointed as Fire and Safety Officer. This officer shall be responsible for monthly inspection of the facility and development of Standing and Emergency Operating Procedures relating to fire and safety and for staff and safety training.

f. Inspection. Each facility shall be inspected at least annually by the State Fire Marshal's Office. Any violation noted shall be corrected immediately.

§95-1-10. Sanitation And Hygiene.

10.1. Responsibility. Jail authorities shall maintain the facility in a condition that is clean, healthful and sanitary, and which conforms to all applicable health laws and regulations. <u>The use and possession of tobacco, tobacco products and tobacco-like products shall be prohibited in all jail facilities and all facilities jointly operated by the Regional Jail & Correctional Facility Authority and the Division of Corrections.</u>

10.2. Maintenance. Jail authorities shall develop and implement a plan for the maintenance at an acceptable level of cleanliness and sanitation throughout the jail. Such a plan shall provide for a regular schedule of housekeeping tasks and inspections which shall include, but not limited to, the following:

a. The daily cleaning of toilets, sinks and showers;

b. The daily cleaning of floors;

c. The emptying and cleaning of receptacles provided for ~~cigarettes and other~~ refuse each day and provision for adequate trash removal;

d. The scrubbing and rinsing of living unit, washing of windows, cleaning of janitors closets, and dusting of bars, screens and ledges on a regular basis;

e. The contracting of extermination services to be performed with sufficient frequency and thoroughness to keep the jail free from insects and vermin. Services shall include, at a minimum, monthly inspections by a qualified person; and

f. The cleaning and sanitary maintenance of all kitchen areas and all equipment.

10.3. Inspections. There shall be regular sanitation inspections of all institution areas by a designated staff member; at least annual inspections by federal, state and/or local sanitation and health officials, or other qualified person(s); and, compliance with all applicable laws and regulations of the governing jurisdiction.

10.4. Water supply. The water supply and plumbing fixtures shall meet all applicable codes and be maintained in operable and sanitary condition. Water samples from both drinking and waste water shall be tested periodically to ensure that the facility's water meets all applicable laws. The facility shall provide hot and cold running water.

10.5. Cleaning equipment. Inmates shall be provided sufficient cleaning equipment to maintain their cells in a clean condition.

10.6. Floors. Facility floors shall be kept clean, dry, and free of hazardous substances. Floors shall be inspected regularly throughout the day for cleanliness. Particular attention should be given to potentially hazardous areas, such as showers, kitchens, detoxification rooms, boiler and furnace rooms.

10.7. Personal hygiene items. The facility shall provide each inmate as part of the admission process and thereafter an adequate supply of soap, toothpaste, toilet paper, toothbrush, comb, and feminine hygiene supplies. Timely access to shaving equipment shall also be provided.

10.8. Facility clothing. Clean, suitable, and presentable clothing shall be available to all inmates at all times. It is essential that inmates be provided clothing that is properly fitted, climatically suitable, durable, economical, easily laundered and repaired, and presentable to the extent that they do not provide such clothing themselves. ~~Outerwear~~ Outer wear shall

be available for recreation and work assignments.

10.9. Special clothing. Inmates shall be issued special, and where appropriate, protective clothing and equipment when participating in special work assignments. Such clothing shall be available in quantities which permit exchange as frequently as the work assignment requires.

10.10. Bedding. Each inmate shall be provided with one clean fire retardant mattress, two (2) clean sheets, clean pillow and clean pillow case. Worn bedding and linen which are unfit for further use shall not be issued. Clean blankets shall be provided in a number appropriate to the season.

10.11. Towels. Each inmate shall be provided a clean towel and washcloth at least three (3) times a week.

10.12. Laundry of bedding. Laundry services shall be sufficient to permit the regular exchange of sheets and pillowcases at least weekly. Mattresses shall be cleaned or replaced as appropriate.

10.13. Laundry of clothing. Clean undergarments shall be provided daily and outer garments every other day, or as appropriate.

10.14. Recording. The issue of all clothing and bedding shall be recorded to provide accountability for their use. Inmate accountability for clothing and bedding shall be specified in inmate rules and regulations.

10.15. Supply. The clothing, linen, and bedding supply shall exceed that required for the maximum inmate population. This excess allows replacement of items that are lost, destroyed or worn out.

10.16. Cleaning and storage of personal clothing. There shall be provision for needed cleaning and storage of inmate personal clothing. Prior to storage, inmate clothing should be clean and/or disinfected to prevent odors and vermin accumulation.

10.17. Court appearance. Inmates shall be permitted to wear personal clothing for court appearances.

10.18. Removal of linen and bedding. Linen and bedding shall be removed from an inmate's bed only under extreme circumstances such as to protect the inmate from self-injury. An action to remove linen or bedding shall be reviewed daily by the supervisor and the deprivation ended as soon as practical. A record shall be kept of all such actions taken.

10.19. Showers. There shall be sufficient facilities in the

housing areas to permit inmates to shower or bathe upon admission to the facility and daily thereafter.

10.20. Water temperatures. Water temperatures for showers or bathing shall be thermostatically controlled to ensure the safety of inmates.

10.21. Access to water. Inmates shall have continuous access to a washstand with running hot and cold water.

10.22. Hair care. Hair care services and facilities shall be available to inmates. Hair shall be cut under sanitary conditions. The area used for hair care shall be located to permit observation by staff. Equipment shall be stored securely when not in use.

§95-1-11. Security And Control.

11.1. Manual. Written policy and procedure for security and control, including procedures for emergencies, shall be contained in a manual which is available to all staff and is reviewed annually and updated as needed.

11.2. Control center. The facility shall maintain a control center.

11.3. Communication system. The facility shall have a communication system between the control center and the inmate living areas.

11.4. Alarm system. The facility shall have an emergency alarm system that is linked to the control center; signal devices shall be located throughout the facility.

11.5. Secure perimeter. All security perimeter entrances, control center doors and cell blocks doors opening into a corridor shall be kept locked, except when used for admission or exit for employees, inmates or visitors, and in emergencies.

11.6. Electronic surveillance. When audio or visual electronic surveillance is used, it shall be located primarily in hallways, elevators, corridors or at points on the security perimeter, such as entrances and exits.

11.7. Immediate assistance. No staff member shall enter a high security cell block without the availability of immediate assistance from another staff member.

11.8. Inmate movement. Staff shall regulate inmate movement.

11.9. Personal interaction. Written policy and procedure shall facilitate personal contact and interaction between staff and inmates. Supervision of inmates shall be conducted by staff of the

same sex whenever procedures require physical contact, examination or monitoring of personal hygiene activities.

11.10. Staffing. The facility shall have the staff needed to provide full coverage of designated security posts, full surveillance of inmates, and to perform all ancillary functions.

11.11. Emergency response. Correctional officers shall be located in or immediately adjacent to inmate living areas to permit officers to hear and respond promptly to emergency situations.

11.12. Observation. Written policy and procedure require that all high and medium security inmates shall be personally observed by a correctional officer at least every thirty (30) minutes, but on irregular schedule. A schedule of at least fifteen (15) minute observation shall be required for those inmates who are violent, suicidal, mentally disordered or who demonstrate unusual or bizarre behavior.

11.13. Daily record. The facility administration shall maintain a written daily record of the following:

a. Personnel on duty;

b. Inmate population count;

c. Admissions and release of inmates;

d. Shift activities;

e. Entry and exit of physicians, attorneys and other visitors; and

f. Unusual occurrences.

11.14. Daily inspections. Designated staff shall visit and inspect every area of the facility daily, including holidays and weekends and report their findings in writing to designated officials with recommendations for action or notations of action taken.

11.15. Weekly inspections. The facility administrator or designee shall inspect all security facilities and devices at least weekly and initiate corrective action if needed.

11.16. Searches. Written policy and procedure shall provide for searches of facilities and inmates to control contraband and provide for its disposition and recommendations for corrective action. Procedure shall provide for the following:

a. Manual or instrument inspection of inmate body cavities is conducted only when there is reason to do so and when

authorized by the facility administrator or his designee;

b. Visual inspections are conducted only when there is a reasonable belief that the inmate is carrying contraband or other prohibited material;

c. Strip searches are done without specific authorization only upon entry to the facility and at all other times are based on articulable suspicion; and

d. All such inspections are conducted in privacy and manual or instrumental inspection of body cavities is done by medically trained personnel or correctional personnel trained by health care personnel.

11.17. Preservation of evidence. Procedure shall govern searches and the preservation of evidence when a new crime is suspected. Searches shall be authorized only by the administrator or designee.

11.18. Search policy published. The policy regarding searches for the control of contraband shall be published, made available to the staff and inmates, reviewed at least annually and updated if necessary.

11.19. Control of security equipment. Written policy and procedure govern the availability, control and use of firearms, ammunition, chemical agents, "stun guns", and related security devices, and require that sufficient security equipment shall be available to meet the facility needs.

11.20. Storage of security equipment. Procedures shall provide that ammunition, chemical agents and related security equipment are stored in a secure but readily accessible depository located outside inmate housing and activity areas, and are inventoried at least monthly to determine their condition and expiration dates.

11.21. Use of weapons. Written policy and procedure shall be established regarding the use of weapons, and shall include federal and state requirements, weapons lock up, weapons instructions and inspections, use of deadly force, and other appropriate actions regarding life threatening situations.

a. Weapons are subjected to stringent safety regulations and inspections;

b. Secure weapons locker is located outside the security perimeter of the facility;

c. Except in emergency situations, firearms and weapons, such as nightsticks are permitted only in designated areas to which

inmates have no access;

d. Employees are instructed to use deadly force only after other actions have been tried and found ineffective unless the employee believes that a person's life is immediately threatened; and

e. Employees on duty only use firearms or other security equipment which have been issued through the facility and only when directed by or authorized by the facility administrator or designee.

11.22. Written record. Personnel shall maintain a written record of routine and emergency distribution of security equipment.

11.23. Written reports. Personnel discharging firearms, using chemical agents or any other weapons, or using force to control inmates shall submit written reports to the facility administrator or designee no later than the conclusion of that person's tour of duty.

11.24. Injuries. All persons injured in an incident shall receive an immediate medical examination and treatment.

11.25. Incident reports. Written policy and procedure shall require prompt oral and written reporting of all incidents that result in physical harm to, or threaten the safety of any person in the facility, or that threaten the security of the facility.

11.26. Keys. Written policy and procedure shall govern the control and use of keys.

11.27. Tools. Written policy and procedure shall govern the control and use of tools and culinary and medical equipment.

11.28. Custodial posts. There shall be written orders for every custodial post which are reviewed annually and updated if necessary.

11.29. Post orders. Procedure shall require that personnel read, sign and date the appropriate post orders each time they assume a new post.

11.30. Escapes. Procedure regarding escapes shall be available to all personnel, and shall be reviewed at least annually and updated if necessary.

11.31. Riots and other disturbances. There shall be plans that specify procedures to be followed in situations including, but not limited to, riots, hunger strikes, disturbances and taking of a hostage. These plans shall be made available to applicable personnel, and reviewed and updated at least annually.

11.32. Mass arrests. There shall be procedures to be followed in the event of a mass arrest that exceeds that maximum capacity of the detention facility.

11.33. Work stoppage. There shall be a written plan that provides for continuing operations in the event of a work stoppage or other job action. Copies of this plan shall be available to all supervisory personnel, who are required to familiarize themselves with it.

11.34. Physical force. Written policy and procedure shall restrict the use of physical force to instances of justifiable self-defense, protection of others, protection of property and prevention of escapes, and only when it is necessary to control inmates and in accordance with appropriate statutory authority. In no event shall physical force be justifiable as punishment. A written report shall be prepared following all use of force and submitted to the facility administrator.

11.35. Mechanical restraints. Instruments of restraint shall be used only as a precaution against escape, during transfer, for medical reasons by direction of the medical officer, and as a prevention against inmate self-injury, injury to others or property damage when there is approval from the facility administrator or designee. They are applied for only the amount of time absolutely necessary.

11.36. Inmate authority. No inmate or group of inmates shall be given control or authority over other inmates.

11.37. Shift reports. Custodial staff members shall maintain a permanent log and prepare shift reports that record routine and emergency situations, and unusual incidents.

11.38. Weekly inspection. The facility administrator or designee, the chief custodial officer, and other department heads shall inspect the facility's living and activity areas at least weekly.

11.39. Transportation of inmates. When transportation is the responsibility of facility staff, written policy and procedure shall govern the transportation of inmates outside the facility.

11.40. Facility vehicles. Written policy and procedure shall govern the use and security of facility vehicles.

11.41. Personal vehicles. Written policy and procedure shall govern the use of personal vehicles for official purposes, including provision for insurance coverage.

§95-1-12. Special Management Inmates.

12.1. Operation of segregation units. Written policy and procedure shall provide for the operation of segregation units for the supervision of inmates under administrative segregation, protective custody and disciplinary detention.

12.2. Immediate segregation. Only the facility administrator or designee can order immediate segregation and only when it is necessary to protect the inmate or others.

12.3. Disciplinary detention. Inmates shall be placed in disciplinary detention for a rule violation only after a hearing by the appropriate committee, or hearing officer, and when no other available alternative dispositions are adequate to regulate an inmate's behavior within acceptable limits and the inmate's presence in the general population poses a serious threat to the orderly operation or security of the facility.

12.4. Administrative segregation. Inmates are placed in administrative segregation only after a hearing before the facility administrator or shift supervisor, classification committee, or other standing committee specifically designated for this purpose.

12.5. Administrative segregation hearing. Placement in administrative segregation should be preceded by the inmate receiving notice of intended placement, appearance at the hearing and an opportunity to present his or her case to the hearing officer(s).

12.6. Review of administrative segregation. The status of the inmate shall be reviewed at least every fifteen (15) days to determine whether the reasons for initial placement in the unit continue to exist. If the reasons do not, the inmate shall be released from the unit.

12.7. Release and appeal from administrative segregation. An inmate shall be released from administrative segregation by action of the appropriate committee with jurisdiction over the inmate's placement in this status, or an appeal to the administrator or appropriate supervisory authority.

12.8. Protective custody. An inmate is admitted to the segregation unit for purposes of protective custody only when there is documentation that protective custody is warranted and no reasonable alternatives are available. Protective custody shall be used only for short periods of time, except when an inmate needs long-term protection, and the facts are well documented. When an inmate consents to protective custody, it shall be fully documented with a consent form signed by the inmate. The inmate may at any time request reassignment to the general inmate population.

12.9. Review of protective custody. Inmates in protective custody shall have their status reviewed by the appropriate

personnel at least every fifteen (15) days.

12.10. Appeal of protective custody. When inmates are placed in protective custody an appeal process shall be provided to the administrator or appropriate supervisory authority.

12.11. Isolation. The responsible physician shall approve a plan guiding the use of restraints in isolation. For an inmate to be kept in isolation for more than twenty-four (24) hours, a physician or mental health professional shall determine upon evaluation that the inmate is a threat to self or others. Transfers to a hospital or state institution may be appropriate. Isolation shall be reviewed as soon as possible by the facility supervisor but in no event later than six (6) hours after its initiation. Inmates placed in isolation as a result of being out of control shall be released immediately upon gaining self-control. An appeal process to the administrator or the appropriate supervisory authority shall be provided.

12.12. Isolation observation. A monitoring procedure shall be used to observe inmates in isolation. Such procedures shall include regular observations and at least an hourly recording. Recording shall include information on name, date and hour admitted, type of infraction or reason for isolation, release time and any physical or mental problems or needs. All visits by health personnel shall also be recorded.

12.13. Permanent log in segregation units. Staff members in the segregation units shall maintain a permanent log. Admissions of all inmates to these units shall be recorded with information on name, number, housing location, date admitted, type of infraction or reason for admission, tentative release date, and special medical or psychiatric problems or needs. The log should be used to record all visits by officials who inspect the units or counsel inmates, all unusual inmate behavior, and all releases.

12.14. Potential suicide watch. Inmates who are classified as potential suicide risks shall be continually monitored including verbal exchanges. Recording of this monitoring shall be made and placed in the inmate's health record. High risk persons shall be placed on continuous suicide watch.

12.15. Deprivation of authorized item or activity. Whenever an inmate in segregation is deprived of any usually authorized item or activity, a written report of the action shall be made and forwarded to the facility administrator. The report shall identify the inmate, the item or activity he/she has been deprived of, and the reasons for the action. The report shall be forwarded to the chief security officer as soon as possible. If circumstances warrant the removal of all of an inmate's personal items, approval for this action shall be obtained in advance from the facility administrator or designee. No item or activity shall be withheld

longer than is necessary to ensure the inmate's safety and the well-being of the staff and other inmates. In no case shall an inmate be deprived of an item or activity for the purpose of punishment unless proper disciplinary process has been utilized.

12.16. Meals. Inmates in segregation shall receive the same meals as those served to the general population. Deprivation of food shall never be used as punishment.

12.17. Shower. Inmates in segregation shall have the opportunity to shave and shower daily. Inmates in segregation shall have the opportunity to maintain an acceptable level of personal hygiene, unless procedures present an undue security hazard.

12.18. Clothing, bedding, hair service. The issue and exchange of clothing, bedding and linen and for laundry, barbering and hair care services shall be provided for inmates in segregation on the same basis as inmates in the general population; exceptions are permitted only where found necessary by the senior officer on duty, and are recorded in the unit log and justified in writing. Inmates in segregation shall be afforded the same hygienic living conditions as the general inmate population.

12.19. Mail. Inmates in segregation shall be provided the same opportunities for the writing and receipt of letters as those available to the general inmate population. Letters shall be delivered promptly. If any item consistent with the policy and procedure is rejected, the inmate shall be advised of the reason for the rejection, and the item shall be returned to the sender.

12.20. Visitation. Inmates in segregation shall be provided opportunities for visitation, unless there are substantial reasons for withholding such privileges. Every effort shall be made to notify approved visitors of any restrictions on visiting. This procedure will avoid disappointment and unnecessary inconvenience for the visitors.

12.21. Telephone. Inmates in disciplinary detention shall be allowed limited telephone privileges, which consist of telephone calls related specifically to access to the judicial process and family emergencies as determined by the facility administrator or designee. Inmates in disciplinary detention ordinarily are not provided telephone privileges as a condition of the discipline imposed. This shall not preclude emergency telephone calls to and from designated practicing attorneys in connection with prospective or pending litigation. Inmates in administrative segregation and protective custody shall be allowed telephone privileges.

12.22. Legal materials. Inmates in segregation shall have access to both personal legal materials and to available legal reference materials. Reasonable arrangements shall be made to

assist these inmates in meeting court deadlines.

12.23. Reading materials. Inmates in segregation shall have access to reading materials.

12.24. Exercise. Inmates in segregation shall be allowed the same opportunity for recreation as those in general population absent specific temporary security restrictions designated in writing by the administrator in advance.

12.25. Programs and services. Inmates in segregation shall be allowed to participate in facility programs to the same extent as the general inmate population, providing their participation is consistent with the safety and security of the facility and the community. They shall also have the same opportunity to receive treatment from professional persons, such as social workers, psychologists, counselors, and psychiatrists.

12.26. Visits from staff. Inmates in segregation shall receive daily visits from the chief security officer or shift supervisor, members of the program staff upon request, or a qualified health care official three (3) times per week unless medical attention is needed more frequently.

12.27. Staffing of segregation units. Written policy and procedure shall govern selection criteria, supervision and assignment of staff who work with inmates on a regular and daily contact basis in segregation units. Procedures shall be established to supervise and evaluate the on-the-job performance of all staff members who work with inmates in segregation. Administrative procedures shall exist for promptly removing ineffective staff members from these positions. The need for rotation shall be based on the intensity of the assignment.

§95-1-13. Food Service.

13.1. Menu inspection. A qualified nutritionist shall inspect and approve menus in advance of adoption and make recommendations regarding diets to assure adherence to nationally recommended basic daily caloric and nutritional requirements.

13.2. Review. All menus, including special diets, shall be planned, dated, and available for review at least one month in advance; notations are made of any substitutions in the meals actually served. Substitutions shall be of equal nutritional value.

13.3. Temperature. Meals must be served at the appropriate temperature. There shall be at least two (2) hot meals a day.

13.4. Varied and nutritional. Meals must be varied and nutritional. There shall be a rotation of at least four (4) weeks

duration of planned menus from a registered diet under the direction of food service employees.

13.5. Special diets. Special diets for medical and religious reasons shall be provided.

13.6. Management. A staff member experienced in food service management shall be designated to be responsible for food service management and operations.

13.7. Health protection. Adequate health protection shall be provided for all inmates and staff in the facility, and inmates and other persons working in food service. Food handlers, facility, and equipment shall meet all applicable health and safety standards. Inmate food handlers shall be required to receive a complete physical examination prior to job assignment.

13.8. Records. Records of daily menus shall be maintained. Records of inmates' refusal to eat shall be noted in their medical files.

13.9. Restriction. Restriction of food shall not be used as discipline.

13.10. Toilet and wash basin. Toilet and wash basin facilities shall be available to food service personnel and inmates in the vicinity of the food preparation area.

13.11. Regimentation. Meals shall be served under conditions that minimize regimentation, although there should be supervision by staff members. Meals shall not be served in cells unless it is necessary for purposes of safety and security. When a meal must be served in a cell, a small table or shelf and some type of seat shall be provided which shall not be in close proximity to toilets.

13.12. Frequency. At least three (3) regular meals of which two (2) are hot meals, shall be served at regular meal times during each twenty-four (24) hour period with no more than thirteen (13) hours between the beginning of the evening and breakfast meals.

13.13. Budgeting, purchasing and accounting. The food service operations shall use budgeting, purchasing and accounting practices that include, but are not limited to, the following systems:

a. Food expenditure cost accounting designed to determine cost per meal;

b. Estimation of food service requirements;

c. Purchases of supplies at wholesale prices and under other favorable conditions, when possible;

d. Determination of and responsiveness to inmate eating preference; and

e. Refrigeration and storage of food, with specific storage periods.

13.14. Equipment and dining area inspection. There shall be the following:

a. Weekly inspection by a trained individual of food service areas, including dining and food preparation areas and equipment, with records maintained of such inspections;

b. Sanitary, temperature controlled storage facilities for all foods; and

c. Daily checks of refrigerator and dishwashing water temperatures by administrative, medical or dietary personnel.

13.15. Documentation. There shall be documentation that health and safety regulations are met.

13.16. Utensils. All inmates shall be provided all necessary utensils and drinking cups with each meal.

§95-1-14. Medical And Health Care Services.

14.1. Right to medical care. All inmates shall have prompt access to necessary medical, dental and psychiatric care provided in a reasonable manner by licensed personnel.

14.2. Responsibility. Medical, dental and mental health matters involving clinical judgments shall be the sole province of the responsible physician, dentist and psychiatrist or qualified psychologist respectively; however, security regulations applicable to facility personnel also apply to health personnel. The official responsible for the facility provides the administrative support for the accessibility of health services to inmates.

14.3. Responsible physician. A responsible physician shall be designated to approve health care policies, procedures and agreements which can include use of hospital emergency rooms. Each jail shall have agreements for twenty-four (24) hour on call physician coverage. The responsible physician may be a County Health Officer, a private practitioner, or a physician may be obtained voluntarily through the County Medical Society. All physicians and dentists examining or treating inmates shall be licensed to practice in the State of West Virginia.

14.4. On-site health authority. There shall be an on-site health authority who shall be responsible for arranging and making available all health care services. There shall be a health

authority on site twenty-four (24) hours per day. The health authority may be a physician, physician's assistant, registered or licensed practical nurse, nurse practitioner, paramedic, emergency medical technician, or a health-trained staff member.

14.5. Medical autonomy and jail administration. Medical decisions shall be made only by the physician or designee(s). It shall be made clear to the health authorities and physicians that security regulations which apply to the nonmedical jail staff also apply to them. They will be provided with a list of these regulations and an orientation to the jail system.

14.6. Duties and responsibilities. Appropriate state and federal licensure, certification or registration requirements and restrictions apply to personnel who provide health care services to inmates. The duties and responsibilities of such personnel shall be governed by written job descriptions approved by the responsible physician and the facility administrator. Verification of current credentials and job descriptions shall be on file in the facility. The provision of quality health care shall be ensured by using only qualified health care personnel to determine and supervise health care procedures. Written job descriptions shall include qualifications required and the specific role in the health care delivery system in keeping with the individual's professional training. Verification of qualifications may consist of copies of current credentials status.

14.7. Administrative meetings and reports. There shall be meetings between the physician and the facility administrator to discuss jail health care at least quarterly. Notes of these meetings shall be kept by the administrator. The responsible physician shall submit quarterly reports on the health care delivery system and annual statistical reports. The report shall include topics such as the effectiveness of the health care delivery system, description of any health environment factors which need improvement, changes effected since the last reporting period and, if needed, recommended corrective action. There shall also be an Annual Statistical Report which will include the number and nature of sick call visits, diagnostic studies performed, emergency services rendered, specialty referral visits, hospitalizations, special procedures performed, ambulance transfers, communicable diseases reported and deaths. The annual Statistical Report shall be submitted to the appropriate authority having jurisdiction. The responsible physician will submit an annual appraisal of the jail's health care delivery to the authority having jurisdiction.

14.8. Review. Each policy, procedure and program in the health care delivery program shall be reviewed at least annually by the responsible physician and revised if necessary. Each document shall bear the date of the most recent review or revision and the signature of the reviewer.

14.9. Policies and procedures. The physician shall write or approve prewritten health policies and procedures at a minimum for the following aspects of jail health care:

a. Decision making: Special problem patients;

b. Notification of next of kin;

c. Post-mortem examination;

d. Minimal staff training requirements;

e. Emergency services;

f. Suicide prevention;

g. Prohibitions;

h. Receiving screening;

i. Health appraisal;

j. Care for persons under the influence of drugs;

k. Mentally ill;

l. Psychiatric illness;

m. Access to treatment, daily health complaints;

n. Sick call;

o. Health promotion;

p. Disease prevention;

q. Dental care;

r. Special medical programs;

s. Prostheses;

t. Management of pharmaceuticals;

u. Administration of medication;

v. Health records;

w. Transfer of records;

x. Confidentiality;

y. Facilities and equipment;

z. First aid kits;

aa. Informed consent;

bb. Medical research; and

cc. Serious illness.

14.10. Decision-making: Special problem patients. Before inmates with diagnosed psychiatric or significant medical illnesses are given housing assignments, work assignments, disciplinary measures, or transfers, consultation between the facility administrator and responsible physician or their designees shall take place to decide on any special precautions or preparations. A list of frequent illnesses which require special arrangements shall be developed. Special diets must be provided when ordered by health personnel and approved by the responsible physician.

14.11. Notification of next of kin. Any inmate having any serious illness or injury or who dies while incarcerated shall have his next of kin or legal guardian notified by the facility administrator or the responsible physician.

14.12. Post-mortem examination. In the event of an inmate death, the state medical examiner shall be notified immediately. If the cause of death is unknown, or the death occurred under suspicious circumstances, or the inmate was unattended from the standpoint of not being under current medical care, a post-mortem examination shall be performed.

14.13. Minimum staff training requirements. Health trained staff shall have the equivalent of EMT training and also have received information regarding the symptoms of physical and mental illnesses common to the inmate population (including depression and chemical dependency), basic management of seizures, medication administration, health record maintenance, recognition of potential suicides, ability to respond to health-related situations within four minutes, first aid training and procedures for patient transfers to appropriate medical facilities or health care providers. Training may be effected through a local hospital Emergency Room, County Health Department, County Medical Society, Red Cross Chapter, or any other program approved by the responsible physician. An appropriate training course may be completed in approximately sixty to eighty (60-80) hours. Each shift shall include at least one member who has become health-trained as described above. Ideally these persons shall be from the health care profession but may be trained jail personnel.

14.14. Emergency Services. There shall be twenty-four (24) hour emergency medical care available to handle a medical emergency

or unexpected health need. The responsible physician shall approve a plan providing for the use of emergency transportation, use of a local hospital emergency department or appropriate health facility with emergency on-call physician services, procedures for the transfer of inmates to other medical facilities and security procedures.

14.15. Suicide prevention. A written suicide prevention and intervention program shall be approved by a qualified medical or mental health professional. All staff with responsibility for inmate supervision shall be trained in the implementation of the program. Staff shall have responsibility for preventing suicides through intake screening, identification and supervision of suicide-prone inmates.

14.16. Prohibitions. Inmates shall not be used for the following duties:

a. Performing direct patient care services;

b. Scheduling health care appointments;

c. Determining access of other inmates to health care services;

d. Handling or having access to surgical instruments, syringes, needles, medications, health records; and

e. Operating equipment for which they are not trained.

These restrictions, however, shall not preclude inmates from participating in a certified vocational training program. They shall be able to perform maintenance and janitorial services under supervision of qualified staff. They shall not operate medical equipment unless appropriately credentialed and licensed, and directly supervised by the responsible physician. Inmates shall not perform direct services such as dental chairside assistance unless they are part of certified vocational training program.

14.17. Receiving medical screening. A receiving medical screening appraisal to elicit information pertinent to the inmate's health shall be performed on every inmate at the time of admission. The screening shall be recorded on a form which has been approved by the responsible physician. Screening is a means to discover and prevent health and safety threats to inmates and staff. The goal of receiving screening shall be to detect any communicable diseases, chemical dependence, suicide potential, or other medical or psychiatric problems before the inmate is placed with the jail population. When the inmate has been transferred from another facility and is accompanied by a previously completed screening form, the form shall be reviewed and verified. Receiving screening shall be conducted by a health-trained staff member. Inmates who

are in need of immediate medical attention at the time of admission shall be referred immediately for emergency care after the physician on call has been notified. The screening process shall include a least an inquiry, observations and dispositions.

a. Inquiry. The screening process shall include, but is not limited to, an inquiry into:

A. Current illness and health problems, including dental problems;

B. Venereal diseases and other infectious disease;

C. Medication taken and special health requirements;

D. Use of alcohol and other drugs which includes types of drugs used, mode of use, amounts used, frequency used, date or time of last use and history of problems which may have occurred after ceasing use (e.g. convulsions);

E. Past and present treatment or hospitalization for mental disturbance or suicide; and

F. Other health problems designated by the responsible physician.

b. Observations. The screening process shall include, but not be limited to, observations including:

A. Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;

B. Body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, etc.; and

C. Indications of recent or chronic substance abuse, i.e., needle marks.

c. Disposition. The screening process shall include the following disposition to:

A. General population;

B. General population and referral to appropriate health care services;

C. Referral to appropriate health care services on an emergency basis; and

D. Medical isolation or special observation.

14.18. Health appraisal. Within fourteen (14) days of admission, a health appraisal shall be completed for each inmate which includes a history and examination, recorded on a form approved by the physician. Although a physician, physician's assistant or nurse practitioner must perform the physical examination, the health history may be collected by a health-trained staff member. The health appraisal shall include:

a. Reviews of the earlier receiving screening by the examining clinician;

b. Collections of additional data to complete the medical, dental, psychiatric and immunization histories;

c. Administering of laboratory and/or diagnostic tests to detect communicable disease and tuberculosis;

d. Recording height, weight, pulse, blood pressure and temperature, administering of other tests, and examination with comments about mental and dental status;

e. Reviews of the results of the medical examination, tests and identification of problems by a physician; and

f. Initiation of therapy when appropriate.

14.19. Care for persons under the influence of drugs. The responsible physician shall approve policies and procedures for the identification of alcohol and drug dependence as well as subsequent management and/or transfer for the care of persons under a drug influence. Unless the jail has special facilities and constant medical supervision to perform detoxification, the process shall not be performed on site; the inmate shall be transferred to a hospital or community detoxification center designated by the responsible physician. Procedures for adequate care of persons under the influence of drugs include policies and training governing medical screening, observation, referral evaluation, and safety protections.

14.20. Mentally ill. Post admission screening and referral for care of mentally ill or retarded inmates whose adaptation to the correctional environment is significantly impaired shall be provided. Psychiatric problems identified either at receiving screening or after admission shall be followed up by medical staff. The urgency of the problems determines the responses. Suicidal and psychotic patients are emergencies and require prompt attention. Inmates awaiting emergency evaluation shall be housed in a specially designated area with constant supervision by trained staff. Inmates shall be held for only the minimum time necessary, before emergency care is rendered. All sources of assistance for mentally ill and retarded inmates shall be identified in advance of need, and referrals should be made on all such cases. No person

shall be housed solely on account of involuntary commitment proceedings pursuant to chapter twenty-seven, article five of the West Virginia Code.

14.21. Psychiatric illness. There shall be consultation between the facility administrator and the responsible physician or their designees prior to the following actions being taken regarding patients who are diagnosed as having a psychiatric illness:

a. Housing assignments;

b. Program assignments;

c. Disciplinary measures; and

d. Transfers in and out of the institution.

14.22. Access to treatment. It shall be required that each inmate, at time of admission, be given orally and in writing, information concerning the right to medical treatment. The information sheet shall be approved by the responsible physician, and shall include procedures for registering complaints and the jail's sick call schedule.

14.23. Health complaints. Inmate's health complaints shall be acted upon by trained personnel and followed by appropriate treatment by qualified personnel according to priorities of need.

14.24. Sick call. Inmates will have daily access to sick call forms which will be reviewed that day by the health authority or other person designated by the responsible physician. All complaint forms will become part of the inmate's health record. Sick call shall be performed by a licensed physician, physician's assistant, registered nurse, or other person designated by the responsible physician. Sick call is a designated time to see nonemergency problems. Minimum frequency of sick call should be as follows:

a. In facilities with less than fifty (50) inmates, sick call is held once per week at a minimum;

b. In facilities of fifty (50) to one hundred (100) inmates, sick call is held at least two (2) days per week;

c. In facilities of one hundred (100) to two hundred (200) inmates, sick call is held a minimum of three days per week; and

d. In facilities of over two hundred (200) inmate, sick call is held a minimum of five (5) days per week.

If an inmate's custody status precludes attendance at sick call, arrangements are made to provide sick call services in the place of the inmate's detention.

14.25. Use of restraints or isolation for out of control residents. The responsible physician shall approve a plan guiding the use of restraints, or isolation and providing for mental health personnel to evaluate inmates who are repeatedly out of control or remain out of control for more than a short amount of time. Use of physical restraints in controlling inmates inside the facility may be used only for the protection of the individual or others. The use of restraints shall be recorded in the inmate's file. Any time an inmate remains out of control for more than a short amount of time mental health personnel shall be consulted.

14.26. Health promotion. The responsible physician shall consider plans providing inmates with health education and preventive medical services, and shall review inmates' opportunities to engage in exercise.

14.27. Disease prevention. Jails shall establish a holding bed area for use by inmates having medical problems requiring separation or close observation. Inmates shall be allowed to participate in some form of exercise involving large muscle activity for a minimum of one hour daily. Structured programs should be offered.

14.28. Dental care. Dental care shall be provided to each inmate under the direction and supervision of a dentist, licensed in the state in the following circumstances:

a. Dental screening within fourteen (14) days of admission as part of the health appraisal; and

b. Dental treatment, not limited to extractions, within three (3) months of admission when the health of the inmate would otherwise be adversely affected.

14.29. Special medical programs. Arrangements shall be made for the provision of special medical programs, including chronic care, convalescent care and medical preventive maintenance for the inmates. The special medical program shall service a broad range of health problems, e.g., seizure disorders, diabetes, potential suicide, chemical dependency and psychosis. These special medical conditions require close medical supervision. Chronic care is medical service rendered to a patient over a long period of time; treatment of diabetes, asthma and epilepsy are examples. Convalescent care is medical services rendered to a patient to assist in the recovery from illness or injury. Medical prevention maintenance includes health education and medical services, such as ~~innoculation~~ inoculation and immunizations, provided to take advance measures against disease and instruction in self-care for

chronic conditions.

14.30. Medical and dental prostheses. As determined by the responsible physician or dentist, medical and dental prostheses shall be provided when the health of the inmate would otherwise be adversely affected. Prostheses are artificial devices to replace missing body parts or compensate for defective bodily functions.

14.31. Management of pharmaceuticals. Procedures for prescribing, dispensing and administration of drugs shall be in compliance with applicable state and federal laws and regulations. The responsible physician shall approve written procedures for distribution, administration, accounting and disposal of medications. The responsible physician shall approve a written medication log and maintain one for each inmate receiving medication to include the date, time, name of drug and dosage. Any inmate refusing medication must sign a statement to that effect, which is also signed by a staff member and filed in the health record. Medications will be administered only by a physician or nurse, or, after written approval by the responsible physician, by the health authority or health-trained staff members; exception to this requirement may be made in that insulin injections may be self-administered by the inmate with supervision by the health authority or health-trained staff member. The physician shall inform jail personnel of possible side effects of medication on inmates. When medications are taken by mouth, the person administering the drug will observe swallowing to ensure ingestion of the medication. The facility shall provide a locked storage area for medications and maintain a list of medications stocked by the facility. Medications shall be refrigerated if necessary.

14.32. Administration of medications. Persons administering medications shall do so under the supervision of the responsible physician and shall have received training appropriate to their assignment. They are accountable for administering medications according to orders, and record the administration of medications in a manner and on a form approved by the responsible physician. Training from the responsible physician encompasses the medical aspects of the administration or distribution of medication; training from the facility administrator encompasses security matters inherent in the administration or distribution of medications in a correctional facility. The concept of administration or distribution of medications according to orders includes performance in a timely manner.

14.33. Health records. A separate health file shall be established on every inmate at the time of his/her receiving screening. The health record shall be sufficiently detailed to enable any practitioner to give continuing care and enable them to determine what the inmate's condition was at a specific time and what procedures were done and to enable consultants to give an opinion after examination of the inmate. Entries must be written

in ink and be legible, signed and dated. Records shall be maintained for a minimum of seven years after the inmate's last incarceration. The file shall contain the following:

a. The completed receiving screening form;

b. Health appraisal date (if inmate has been incarcerated for at least thirty (30) days;

c. All findings, diagnoses, orders and treatments;

d. Medication log sheet;

e. Results of any laboratory, x-ray and diagnostic studies;

f. Completed medical complaint forms;

g. Place, date and time of health encounters;

h. Dental, psychiatric or other consultation reports;

i. Consent and refusal forms; and

j. Release of information forms.

14.34. Transfer of records. In the case of off-site examination, treatment, transfer to another facility or hospital admission, the inmate's health record or a copy of summary shall accompany him/her. Documentation of any off-site examination or treatment shall be made in the health record by the physician or other health professional involved. Health records shall be returned to the jail with the inmate, or, in the event of transfer or hospital admission, as soon as possible thereafter. Written authorization by the inmate is required for transfer of health record information, except in an emergency situation where the inmate is unable to authorize.

14.35. Confidentiality. The inmate's medical information, records and confidences entrusted to a physician or other medical care professional in the course of screening, examination or treatment are confidential and shall not be disclosed to anyone except:

a. With the inmate's informed consent; or

b. Where the law requires or allows disclosure, e.g., reporting of communicable diseases; or

c. When the security of the institution or the safety of the individual requires disclosure and then only to the extent necessary for the protection of the inmate and the security of the

facility; and

d. The chief administrative officer can review medical records but must maintain their confidentiality except as provided above.

14.36. Facilities and equipment. If health services are delivered on-site, the jail shall have a private examination/treatment area. Basic items provided shall include: Stethoscope, blood pressure cuff, thermometer, tongue blades, flashlight, ophthalmoscope, otoscope and ear specula, percussion hammer, weight scales, examination gloves, vaginal specula and first aid kits, as well as, other equipment designated as necessary by the responsible physician.

14.37. First aid kits. Each jail shall have one or more first aid kits containing, but not limited to, bandages, gauze, sling, adhesive tape, Band-Aids. The responsible physician shall designate the number, location and contents of first aid kits. The health authority must periodically inspect all equipment and first aid kits.

14.38. Informed consent. Informed consent of inmates is necessary for all medical examinations, treatment and procedures except for those which are required by law, e.g., treatment of infectious diseases when public health law requires such treatment. Informed consent is the voluntary consent to a treatment, examination, or procedure by the patient after the patient receives all the material facts regarding the nature, consequences, risk and alternatives concerning the proposed treatment, examination or procedures. When the inmate is a minor, the informed consent of parent, guardian or legal custodian applies when required by law. Exceptions to obtaining informed consent are allowable if they are in accordance with state law (such as emergency situations or public health matters).

14.39. Medical research. The use of inmates for medical, pharmaceutical, or cosmetic experiments is prohibited. A person confined in a facility is incapable of volunteering as a human subject without hope of reward and cannot do so on the basis of fully informed consent. Therefore, inmates shall not participate in experimental projects involving medical, pharmaceutical or cosmetic research, including aversive conditioning, psychosurgery, electrical stimulation of the brain, or the application of cosmetic substance to the body that are being tested for possible ill effects prior to use in general public. This does not preclude the use of a new medical procedure for the individual treatment of an inmate by his/her physician, subsequent to a full explanation of the positive and negative features of the treatment. This agreement is between the physician and the inmate and may not be part of a general program of medical experimentation.

14.40. Notification of next of kin. A process shall be developed for inmates to voluntarily provide the name, address and telephone number of next of kin, or other individual to be notified in case of serious illness, injury or death of the inmate while in custody. Said information shall be obtained as part of the booking process.

§95-1-15. Inmates Rights.

15.1. Access to courts. Inmates shall have unlimited access to courts and to address uncensored communication to governmental authorities. Inmates seeking judicial or administrative redress shall not be subjected to reprisals or penalties as a consequence.

15.2. Attorneys. Sentenced and unsentenced inmates shall have access to attorneys or their representatives, paralegals, and experts. Attorney/client interview rooms with privacy shall be provided. Provision shall be made for contacts during normal facility hours, for uncensored correspondence and telephone communication.

15.3. Access to legal materials. Inmates shall have access to appropriate legal materials. Provisions shall be made for reasonable and meaningful access to a library. The library shall include the following or the equivalent:

a. Black's Law Dictionary;

b. Legal Research in a Nutshell (latest ed.);

c. Federal Habeas Corpus, Sokol, (Mitchie);

d. Criminal Procedures in a Nutshell, Israel, Jerold J. and LaFave, Wayne R., St. Paul: West, or a comparable service;

e. Constitutional Rights of Prisoners, Palmer, John W. (with current supplement) Cincinnati: Anderson, or a comparable service;

f. Criminal Law Hornbook, LaFave & Scott, (West);

g. Federal Rules of Criminal Procedure and Civil Procedure;

h. West Virginia Code, Vols 1-20 (with current supplements), West Virginia Rules of Civil Procedure;

i. Shepard's West Virginia Citations Cases and Statutes;

j. Southeastern Reporter (2nd series, 1960 to date);

k. Criminal Law Reporter (Bureau of National Affairs);

l. U.S. Code Annotated, Titles 18, 28, and 42;

m. Supreme Court Reporter (1960 to date);

n. Federal Reporter (2nd series, 1970 to date);

o. Federal Supplement (1970 to date);

p. Shepard's U.S. Citations and Federal Citations;

q. Corpus Juris Secundum -Criminal Law Sections only;

r. Modern Federal Practice Digest Second (Vols 16-19, 22-32, 53-54, Table of Cases and Indexes); and

s. Michie's Jurisprudence.

15.4. Access to paper and supplies. Inmates shall have access to paper and other supplies related to legal matters. Inmates shall be provided reasonable access to the services of a notary public for legal documents and other general purposes. There shall be no restricting or interfering with jailhouse lawyers or with inmates attempting to assist other inmates in legal matters, or in preparing written communications. Jail staff shall ensure that such interaction of inmates can occur to the maximum extent possible, subject only to legitimate safety and security concerns.

15.5. Voting. Jail officials shall offer inmates on pretrial status and those convicted of a misdemeanor the opportunity to exercise their right to vote. Inmates shall be advised of their right to vote.

15.6. Religious observance. Inmates shall have reasonable opportunities to practice their religions and be permitted visits by spiritual advisors at any reasonable time.

15.7. Checking and saving accounts. Inmates shall be entitled to maintain checking and savings accounts.

15.8. Discrimination. Each inmate shall be free from discrimination based on race, religion, national origin, sex, handicap, or political beliefs. Inmates shall have equal access to various programs and work assignments, and involvement in decisions concerning classification status. There shall be no discrimination in regard to the rights and privileges, restrictive housing, or any other amenities afforded to inmates.

15.9. Protection. Inmates shall be protected from personal abuse, corporal punishment, personal injury, disease, property damage and harassment. In instances where physical force or disciplinary detention is required, only the least restrictive

means necessary to secure order or control shall be used. Administrative segregation shall be used to protect inmates from themselves or other inmates.

15.10. Appearance. Inmate appearance shall not be limited unless it presents clear health, safety or security hazards.

15.11. Grievance procedure. The jail shall have a written grievance procedure explained and available to all inmates and staff. The procedure shall include a provision for an investigation of the grievance and for a written response within a reasonable time (seventy-two hours) and proper action taken to ensure fair resolution of complaints. If the grievance is denied an appeal shall be available.

15.12. Good time. Inmates sentences to jail shall be provided credit for good time in accordance with state statute. Earned good time shall be available to eligible inmates i accordance with statute.

15.13. Due process. No inmates shall be deprived of any good time credit for alleged misconduct unless they have first been afforded the due process protections which include the following:

a. Written notice of the claimed violation;

b. Disclosure of the evidence against them;

c. Opportunity to be heard and to present witnesses and documentary evidence;

d. The right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);

e. A neutral and detached hearing officer;

f. A written statement by the fact-finders of the evidence relied on and reasons for discipline; and

g. The right to counsel if the state is represented by a lawyer, and otherwise the right to be assisted by another inmate, staff member, lay advocate or paralegal.

§95-1-16. Inmate Rules And Discipline.

16.1. Rules of conduct. There shall be written rules of inmate conduct which specify acts prohibited within the facility and penalties that may be imposed for various degrees of violation. These rules shall be provided to all inmates, and procedures shall exist for ensuring that all inmates understand the rules.

16.2. Annual review. The written rules of inmate conduct shall be reviewed annually and updated, if necessary, to ensure that they are consistent with constitutional and legal principles.

16.3. Training. All personnel who deal with inmates shall receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the sanctions available, and the rationale for the rules.

16.4. Minor infractions. There shall be written guidelines for informally resolving minor inmate infractions.

16.5. Disciplinary reports. When rule violations require formal resolution, staff members shall prepare a disciplinary report and forward it to the designated supervisor.

16.6. Minimum contents. Disciplinary reports prepared by staff shall include, but are not limited to, the following information:

a. Specific rules violated;

b. A formal statement of the charge;

c. An explanation of the event, which should include who was involved, what transpired and the time and location of occurrence;

d. Unusual inmate behavior;

e. Staff witnesses;

f. Disposition of any physical evidence;

g. Any immediate action taken, including the use of force;

h. Reporting staff member's signature; and

i. Date and time report is made.

16.7. Investigation. When an alleged rule violation is reported, an investigation shall begin within forty-eight (48) hours of the time the violation is reported.

16.8. Prehearing segregation. Prehearing segregation of inmates who are charged with a rule violation shall be used only when necessary to ensure the safety of the inmate or the security of the facility.

16.9. Sanctions. There shall be a sanctioning schedule for rule violations. The maximum sanction for rule violation shall be

fifteen (15) days for any one violation and no more than thirty (30) days for all violations arising out of one incident. If more than one incident occurs, continuous confinement for over thirty (30) days shall require the review and approval of the facility administrator.

16.10. Prosecution. Written policy and procedure shall provide that in instances in which an inmate is alleged to have committed a crime, the case shall be referred to appropriate law enforcement officials for possible prosecution.

16.11. Written copy of allegation. An inmate charged with a violation of facility rules shall be given a written copy of the alleged violations within twenty-four (24) hours of determination of charges.

16.12. Hearing. Inmates charged with rule violations shall receive a hearing within seventy-two (72) hours of the charge, excluding weekends and holidays. The hearing may be postponed or continued for a reasonable time through a written waiver by the inmate or for documented good cause.

16.13. Written notice of hearing. Written notice of the hearing shall be provided to the inmate at least twenty-four (24) hours in advance of the hearing. The inmate may consent, in writing, to a hearing within less than twenty-four (24) hours.

16.14. Inmate absence. Inmates charged with rule violations shall be present at the hearing, unless they waive that right in writing or through behavior. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion shall be documented.

16.15. Hearing panel. Disciplinary hearings of cases of rule violations shall be conducted by an impartial person or panel of persons.

16.16. Inmate representation. Staff assistance to represent inmates at disciplinary hearings shall be provided upon request of the inmates.

16.17. Rules of evidence. The inmate shall be given an opportunity to make a statement and present documentary evidence, and to have in attendance at a disciplinary hearing any person who has relevant and not unduly cumulative information, except when doing so may severely jeopardize the life or safety of persons or the security or order of the facility; such reasons for denial shall be stated in writing.

16.18. Written record of decision. A written record shall be made of the disciplinary hearing decision and a copy shall be given

to the inmate.

16.19. Review. A review of all disciplinary hearings and disposition by the facility administrator or his designee shall be provided.

16.20. Appeal. Inmates shall have the right to appeal decisions of the disciplinary hearing officer(s), to the administrator or designee. The administrator or designee shall either affirm or reverse the decision of the disciplinary hearing officer(s) within five days of the appeal.

16.21. Not guilty. The disciplinary report shall be removed from all files on inmates found not guilty of an alleged rule violation.

§95-1-17. Communication, Mail And Visitation.

17.1. Inmate correspondence. Written policy and procedure shall govern inmate correspondence; they shall be available to all staff and inmates, and are reviewed annually and updated as needed.

17.2. Limitations. There shall be no limitation on the volume of lawful mail, including letters, packages and publications, which an inmate may send or receive, or on the length, language, content or source of the mail, except where there is clear convincing evidence to justify the limitations for reasons of public safety or facility order and security. Outgoing mail shall be at the inmate's expense except as provided in 17.3.

17.3. Indigent inmates. Indigent inmates shall be provided without cost, sufficient stationary and postage for all letters to attorneys, courts, and public officials, as well as, two (2) personal letters per week.

17.4. Restrictions. Written policy and procedure define the type of publications allowed in the facility and inspection procedures. Restrictions to access of publication shall be directly related to the maintenance of facility order and security.

17.5. Mail processing. Incoming and outgoing letters and packages shall not be held for more than twenty-four (24) hours, excluding weekends and holidays.

17.6. Inspection. Inmate letters, both incoming and outgoing may be opened and inspected for contraband, but shall not be censored. The letters shall not be read or rejected except where there is reliable information that there is a threat to order and security or that they are being used in the furtherance of illegal activity. Inmates shall be notified when incoming or outgoing letters are rejected.

17.7. Cash. Procedures shall provide for the inspection of inmate letters and packages to intercept cash, checks, money orders and contraband. A receipt shall be given the addressee.

17.8. Sealed letters. Inmates shall be permitted to send sealed letters to a specified class of persons and organizations, including, but not limited to: Courts, counsel, officials of the confining authority, government officials, administrators of grievance systems, and members of the parole authority. Mail to inmates from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the inmate.

17.9. Telephone access. Residents shall be afforded the right to reasonable telephone access. Unless phone access is provided by pay phones in the cell blocks, local phone calls shall be free. Telephone calls shall not be monitored unless so authorized by a prior court order. Limitations of telephone use shall not be used as a disciplinary measure, except for violations of written jail regulations relating to telephone use. Jail personnel shall permit inmates to take incoming calls, or take written messages of incoming calls to inmates, and such messages shall be delivered no later than the end of the shift during which they were received. Inmates shall be permitted to return calls within a reasonable time.

17.10. Visitation. The number of visitors an inmate may receive and the length of visits shall be limited only by facility schedules, space and personnel constraints. Visiting hours shall be available at least four (4) times weekly including weekends, holidays and evenings, as well as daytime hours. Each designated visitation period shall be of at least three (3) hours in duration. Individual visits shall not be limited to less than one half hour. Visitors whose schedule cannot accommodate the jail's visiting hours may upon request be granted special hours.

17.11. Visitors; registration. Visitor registration upon entry into the facility shall be required. All circumstances under which visitors may be searched shall be in written policy.

17.12. Posting. A schedule of visitation and visitation policy shall be posted.

17.13. Limitations. Any visitor shall be allowed except those excluded by court order. Inmates shall receive visits from immediate family regardless of age.

17.14. Contact visits. Contact visits shall be available to inmates unless otherwise requested by a party, or unless the inmate's behavior is so extreme as to risk causing serious harm to a person. Denial of contact visitation shall be recorded and explained in the inmate's file.

17.15. Risk inmates. Visiting hours for high risk inmates shall approximate those for other inmates.

17.16. Searches. Inmates may be searched prior and subsequent to visitation. Visitors may be subject to nonintrusive personal searches.

17.17. Privacy. Visitation facilities shall be private and confidential with no monitoring of conversations.

17.18. Visiting area. The noncontact visiting area shall be across tables without impeding visibility and communication.

17.19. Notification and challenges. Inmates shall be notified in writing whenever a visitor is excluded and shall be provided the reasons for the action. An inmate shall be given the opportunity to challenge denial of visitation.

17.20. Counsel. The number of visits with counsel shall not be restricted, during reasonable hours.

§95-1-18. Admission, Orientation, Property Control And Release.

18.1. New inmates. Written policy and procedures shall govern the admission and orientation of new inmates. They shall be reviewed annually and updated if necessary. The jail shall not accept persons who are being committed solely because of the initiation of procedures for involuntary commitment pursuant to W. Va. Code, §27-5-1 et seq.

18.2. Mentally disabled inmates. Care shall be provided for inmates who are believed to be mentally ill, retarded or addicted and in need of treatment, training or other services. The administrator shall be made aware of the illness and shall arrange for a mental health assessment. If the report of the examination confirms the condition and that required services cannot be provided at the facility, the administrator shall immediately take action to initiate a transfer to an appropriate facility pursuant to W. Va. Code §27-6A-1 et seq.

18.3. Minimum requirements. Written policy for admitting new inmates to a detention facility shall include, but not necessarily be limited to, the following subjects:

a. Verification of court commitment papers or other legal documentation of detention;

b. Complete search of the individual and his/her possessions;

c. Disposition of clothing and personal possessions;

d. Medical screening including tests for infectious diseases;

e. Telephone calls by inmates;

f. Shower and hair care, if necessary;

g. Issue of clean clothing;

h. Photographing and/or fingerprinting;

i. Interview for obtaining identifying data;

j. Screening interview by counselor or other trained interviewer;

k. Orientation;

l. Issue of personal hygiene items;

m. Classification for assignment to a housing unit; and

n. Assignment to a housing unit.

18.4. Alcoholics. The jail administration shall refrain from housing or retaining in the jail any persons who they know or should know to be chronic alcoholics when such persons have been charged solely with the offense of public intoxication; such persons shall be afforded all reasonable and necessary medical and health care services forthwith; at all times the proper procedures for treatment of such persons shall be followed in the manner set forth by the West Virginia Supreme Court in State ex rel. Harper v. Zeeger, No. 14950 (filed May 18, 1982) and in its Addendum (filed July 15, 1982).

18.5. Intoxicated or drugged inmates. There shall be written policy and procedure for the safe handling of intoxicated or drugged inmates committed to the jail, when such persons are charged with offenses other than or in addition to public intoxication, including, but not necessarily limited to, the following:

a. All reasonable and necessary medical and health care services shall be provided forthwith in the manner set forth by the Harper, supra, decision, and in its Addendum;

b. Such persons shall be segregated from the general inmate population until such time as they can be safely returned without endangering themselves or others;

c. Whenever one or more such persons are temporarily segregated from the general population, until such time as they can

be safely returned without endangering themselves or others; and

d. When such persons are housed in the facility commonly known as the "drunk tank", or in any other section of the jail, said facility or housing shall, at a minimum, contain the following: Beds, toilet, washstand with hot water.

18.6. Admission location. Inmates shall be separated from the general population during the admissions process.

18.7. Orientation. All newly admitted inmates shall receive written or oral orientation information in the language in which the inmates are fluent. Completion of orientation shall be documented by a statement that is signed and dated by the inmate.

18.8. Telephone. Newly admitted inmates shall be permitted to complete at least three (3) local or collect long distance telephone calls during the admission process.

18.9. Personal property. The personal property inmates can retain in their possession shall be specified.

18.10. Inventory and receipt. A written, itemized inventory of all personal property of newly admitted inmates and secure storage of inmate property, including money and other valuables shall be provided. The inmate shall be given a receipt for all property held until release.

18.11. Release. Written procedures for releasing inmates include, but are not limited to, the following:

a. Verification of identity;

b. Verification of release papers;

c. Completion of release arrangements, including the person or agency to whom the inmate is to be released;

d. Return of personal effects;

e. Verification that no facility property leaves the facility with the inmate; and

f. Completion of any pending action, such as grievance or claims for damages or lost possessions.

§95-1-19. Classification.

19.1. General. Written policy and procedure provide for inmate classification in terms of level of custody required, housing assignments and participation in correctional programs. They shall be reviewed at least annually and updated if necessary.

19.2. Criteria and appeal. The inmate classification plan shall specify criteria and procedures for determining and changing the status of an inmate, including custody, transfers and major changes in programs. The plan shall include an appeals process for classification decision.

19.3. Categories. The facility shall provide for the separate management of the following categories of inmates:

a. Female and male inmates;

b. Pretrial and convicted inmates;

c. Felons and misdemeanors;

d. Other classes of detainees (witnesses, civil ~~prisoners~~ inmates);

e. Community custody inmates (work release, weekenders, trusties);

f. Inmates with special problems (alcoholics, narcotics addicts, mentally disturbed persons, physically handicapped persons, persons with communicable diseases);

g. Inmates requiring disciplinary detention;

h. Inmates requiring administrative segregation;

i. Violent and nonviolent inmates; and

j. Juveniles.

19.4. Juveniles. Juveniles, who are subjected to trial as adults, shall be separated by sight and sound from adult inmates, although they may be in the facility structure. Juveniles who are not subjected to trial as adults are not housed in the facility. The procedures as outlines in W. Va. Code, §§49-5-16 and 49-5-16a shall be followed.

19.5. Discrimination. Segregation of inmates by race, color, creed or national origin shall be prohibited.

§95-1-20. Inmate Work Programs.

20.1. Inmate assignments. The facility shall have a written inmate work opportunities plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of facility security.

20.2. Required work. Pretrial and unsentenced detainees shall not be required to work except to do personal housekeeping.

Any inmate may volunteer for work assignments or institutional programs.

20.3. Maintenance and operation. The inmate work plan shall include provision for work in facility maintenance and operation.

20.4. Public works projects. The inmate work plan shall provide for inmate work assignments in public works projects.

20.5. Community service. The inmate work plans shall include provision for inmates to work in various nonprofit and community service projects.

20.6. Discrimination. Discrimination in inmate work assignments based on sex, race, religion and national origin shall be prohibited.

20.7. Handicapped. The inmate plan shall include provisions for work opportunities for handicapped inmates.

20.8. Compensation. Where statute provides, inmates shall be compensated for work performed.

20.9. Working conditions. Inmate working conditions shall comply with all applicable federal, state and local work safety laws and regulations.

20.10. Reduction of sentence. Where statute permits, the inmate work plan shall include provisions for earning credit towards a reduction of sentence.

§95-1-21. Inmate Services And Programs.

21.1. Availability. Inmate programs and services shall be made available and shall include, but are not limited to, social services, religious services, recreation and leisure time activities and library services.

21.2. Community resources. Inmate programs and services shall provide for the identification and use of available community resources.

21.3. Option to refuse. Inmates shall have the option to refuse to participate in institutional programs, except work assignments and programs required by statute. There shall be written documentation of each refusal maintained in the inmate's file.

21.4. Equal opportunity. All inmates shall have equal opportunities for participation in programs and services.

21.5. Services for drug and alcohol addiction. The facility

shall provide for counseling and program services for inmates with drug and alcohol addiction problems. All necessary medical and health care services shall be provided. The jailing of alcoholics for public intoxication shall be prohibited. Efforts shall be made to seek local Alcoholics Anonymous and other such groups to present programs at the jail and suitable facilities shall be provided for such programs. Alcoholism rehabilitation and drug awareness programs shall be established through a local agency or other qualified person.

21.6. Religion. Inmates shall be provided opportunities to participate in religious services and counseling on a voluntary basis.

21.7. Leisure time activities. The jail shall provide opportunities for all inmates to participate in leisure time activities outside the cell or room on a daily basis. Each inmate shall be permitted at least one hour of leisure time activity each day outside the cell or room. Leisure time activities shall include radio and television, movies, crafts, cards, puzzles, checkers, chess or indoor exercise. There shall be adequate indoor space and equipment enabling large muscle exercise.

21.8. Outdoor exercise. The jail shall provide at least one hour of outdoor exercise per day in an outdoor exercise area with adequate space and equipment permitting regular outdoor sports activity. It shall be constructed to ensure privacy from and safety for the general public.

21.9. Records. Hours and place of recreation shall be recorded on a daily basis.

21.10. Work release. The jail shall set up a procedure for the implementation of work release pursuant to W. Va. Code §§62-11A-1 and 62-11A-2. All inmates shall be notified of their right to apply and appropriate applications and assistance in completing such application shall be provided to inmates upon admission to the jail.

21.11. G.E.D. program. The jail shall arrange for a General Equivalency Diploma program for all inmates who desire to participate.

21.12. Vocational programs. Inmates shall have access to vocational counseling, prevocational/career assessment, adult basic education and vocational training.

21.13. Labor in jail. Inmates over sixteen (16) may consent to perform labor within the jail or county. The jail shall develop a written resident work plan for work in the jail, county or community service agency.

21.14. Good time. Good time policy shall be coordinated with vocation, education and work programs.

21.15. Library services. Library services shall be available to all inmates and shall include, at a minimum: Materials responsive to the interests and educational needs of users; information services to locate facts needed; programs for individuals or group information and enjoyment, such as books, media, discussion groups, music, creative writing, speakers and a distinct library setting. Library resources should be supplemented by the entire collection of local, regional and state libraries, law libraries and interlibrary loan services. When it is appropriate, the resources of the libraries for the blind and physically handicapped should be utilized.

21.16. Staff. The jail shall assign a staff member to coordinate and supervise the library services. Staff providing the service will vary in numbers depending upon the average daily population of the facility.

21.17. Pretrial intervention program. When a pretrial intervention program, diversion program, pretrial release program or parole program is conducted in the facility, sufficient staff, space and equipment shall be provided to service the program.

§95-1-22. Release Preparation and Temporary Release.

22.1. Release preparation. A program of release preparation shall be available to all inmates to prepare them for release from the facility.

22.2. Leaves. Inmates shall be authorized escorted and unescorted leaves into the community dependent upon their classification, and as authorized by the courts.

22.3. Work and educational programs. Inmate participation in work or educational release programs shall be allowed, as authorized by the courts.

22.4. Temporary release. Temporary release programs, as authorized by the courts, shall be required to have the following elements:

a. Written operational procedures;

b. Careful screening and selection procedures;

c. Written rules of inmate conduct;

d. A system of supervision;

e. A complete ~~recordkeeping~~ record keeping system;

f. A system for evaluation of program effectiveness; and

g. Efforts to obtain community cooperation and support.

22.5. Separation from general population. Inmates participating in work or educational release programs shall be separated from inmates in the general population.

§95-1-23. Citizens Involvement And Volunteers.

23.1. Citizen involvement. Citizen involvement in inmate programs may be permitted.

23.2. Volunteer coordinator. A staff member shall be responsible for coordinating the volunteer services program.

23.3. Lines of authority. Lines of authority, responsibility, and accountability for the volunteer services program shall be communicated to staff and volunteers.

23.4. Screening and selection. The screening and selection of volunteers allowing for recruitment from all cultural and socioeconomic segments of the community shall be provided.

23.5. Orientation. Prior to assignments, each volunteer shall complete an orientation training program appropriate to the nature of the assignment.

23.6. Identification. A system for identification of volunteers while they are in the facility shall be provided.

23.7. Written contract. Volunteers shall agree in writing to abide by all facility policies, particularly those relating to security and confidentiality of information.

23.8. Professional services. Volunteers shall perform professional services only when certified or licensed to do so.

23.9. Level of involvement. The administrator shall have discretion to curtail, postpone, or discontinue the services of a volunteer organization.

§95-1-24. Glossary.

24.1. Audit. An examination of facility records or accounts to check their accuracy, which is conducted by a person(s) not directly involved in the creation and maintenance of the records of accounts. An independent audit results in an opinion which either affirms or disaffirms the accuracy of records or accounts. An operational or internal audit usually results in a report to management which is not shared with persons outside the agency.

24.2. Administrative segregation. A form of separation from the general population administered by the classification committee or other authorized group, when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or the security or orderly running of the institution. Inmates pending investigation for trial on a criminal act or pending transfer can also be included. (See protective custody and segregation).

24.3. Booking. Both a law enforcement process and a detention facility procedure. As a police administrative action, it is an official recording of an arrest and the identification of the person, place, time, arresting authority, and reason for the arrest. In the detention facility, it is a procedure for the admission of a person charged with or convicted of an offense, which includes searching, fingerprinting, photographing, medical screen, and collecting personal history data. Booking also includes the inventory and storage of the individual's personal property.

24.4. Chemical agent. An active substance, such as tear gas, used to deter activities which might cause personal injury or property damage.

24.5. Cell block. A group or cluster of single and/or multiple occupancy cells or detention rooms immediately adjacent and directly accessible to a day or activity room. In some facilities the cell block consists of a row of cells fronted by a day room of corridor-like proportion.

24.6. Chief of police. A local law enforcement official who is the appointed or elected chief executive of a police department and is responsible for the operation of the city jail or lockup.

24.7. Classification. A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources.

24.8. Community resources. Public and private organizations or agencies, or any individual from the community which offers services, facilities and other functions which can meet the needs of the facility.

24.9. Contraband. Any item possessed by inmates or found within the confinement facility which is declared illegal by law or not specifically approved for inmate possession by those legally charged with the responsibility for administration and operation of the facility.

24.10. Contractor. A person or organization which agrees to furnish materials or perform services for the facility/jurisdiction

at a specified price. Contractors operating in detention facilities are subject to all applicable rules and regulations for the facility.

24.11. County parole. The status of a county jail inmate who, convicted of a misdemeanor and conditionally released from a confinement facility prior to the expiration of sentence, has been placed under supervision in the community for a period of time.

24.12. Detainee. Any person confined in a local detention facility not serving a sentence for a criminal offense.

24.13. Detention facility. A confinement institution in which adults can be sentenced for up to one year or confined pending adjudication. (See jail)

24.14. Disciplinary hearing. A nonjudicial administrative procedure to determine if substantial evidence exists to find an inmate guilty of a rule violation.

24.15. Disciplinary detention. A form of separation from the general population in which inmates committing serious violations of conduct regulations are confined by the disciplinary committee or other authorized group for short periods of time to individual cells separated from the general population. Placement in detention may only occur after a finding of rule violation at an impartial hearing and when there is no adequate alternative disposition to regulate the inmate's behavior. (See protective custody and segregation)

24.16. Diversion. The official halting or suspension, at any legally prescribed processing point after a recorded justice system entry, of formal criminal or juvenile justice proceedings against an alleged offender. The suspension of proceedings may be in conjunction with a referral of that person to a treatment or care program administered by a nonjudicial agency or a private agency, or there may be no referral.

24.17. Educational release. A custody status under which inmates leave a detention facility to attend school in the community, returning to custody after school hours.

24.18. Emergency. Any significant disruption of normal facility procedure, policy or activity caused by riot, strike, escape, fire, natural disaster or other serious incident.

24.19. Facility administrator. Any official, regardless of local title (e.g., sheriff, chief of police, jail administrator, warden, superintendent) who has the ultimate responsibility for managing and operating the local detention facility.

24.20. Footcandle. A unit for measuring the intensity of

illumination, the amount of light thrown on a surface one foot away from the light source.

24.21. Furlough or temporary leave. A custody status under which an inmate is legally allowed to leave a detention facility and go into the community unsupervised for purposes consistent with the public interest.

24.22. Good time. A system, established by law, whereby a convicted offender is credited a specific amount of time, which is to be subtracted from his/her sentence, for specified periods of time served in an acceptable manner.

24.23. Grievance. A written complaint filed by an inmate with the facility administrator concerning personal health and welfare or the operations and services of the facility.

24.24. Health authority. A physician or qualified health administrator who is responsible for the provision of health care services at an institution or system of institution.

24.25. Health care. The sum of all action taken, preventive and therapeutic, to provide for the physical and mental well-being of a population. Health care includes medical and dental services, mental health services, nursing, personal hygiene, dietary services, and environmental conditions.

24.26. Health care personnel. Individuals whose primary duties are to provide health services to inmates in keeping with their respective levels of health care training or experience.

24.27. Health-trained personnel (medically trained personnel). Correctional officers or other correctional personnel such as social workers, who may be trained and appropriately supervised to carry out certain specific duties with regard to the administration of health care.

24.28. Holding facility or lockup. A temporary confinement facility, for which the custodial authority is seventy-two (72) hours or less, where arrested persons are held pending release, adjudication, or transfer to another facility.

24.29. Holidays. All days legally designated as nonworkdays by statute or by the chief governing authority of a jurisdiction.

24.30. Information system. Includes the concepts, personnel and supporting technology for the collection, organization and delivery of information for administrative use. There are two types of information:

(1) Standard information, consisting of the data required for operational control, such as daily counts, positive and

negative release rates, absconding and runaway rates, referral sources, and payroll data in a personnel office.

(2) Demand information, which can be generated when a report is required, such as the number of inmates in educational and training programs, and duration of confinement.

24.31. Inmate. Any person, whether pretrial, unsentenced, or sentenced, who is confined in a detention or holding facility.

24.32. Inmate records. Information concerning the individual's personal, criminal and medical history, behavior and activities while in custody, including, but not limited to; commitment papers, court orders, detainers, personal property receipts, visitors list, photographs, fingerprints, type of custody, disciplinary infractions and actions taken, grievance, miscellaneous correspondence, etc.

24.33. Jail. A confinement facility which holds persons detained pending adjudication and/or persons committed after adjudication for sentences of one year or less. Jails, while intended for the confinement of adults, sometimes hold juveniles as well. (See detention facility)

24.34. Life safety code. A manual published by the National Fire Protection Association specifying minimum standards for fire safety necessary in the public interest; two chapters are devoted to corrections facilities.

24.35. Medical records. Separate records of medical examinations and diagnoses maintained by the responsible physician. The following information from these records should be transferred to the inmate records; date and time of all medical examinations and copies of standing or direct medical orders from the physician to facility staff.

24.36. Medical restraints. Either chemical restraints, such as sedatives, or physical restraints, such as straight jackets, applied only for medical of psychiatric purposes.

24.37. Medical screening. A system of structured observation/initial health assessment to identify newly arrived inmates who pose a health or safety threat to themselves or others.

24.38. Offender. A person confined in a local detention facility serving a sentence for a criminal offense.

24.39. Parent agency. The administrative department or division to whom the facility administrator reports; it is the policy-setting body. For the county jail, this is the sheriff's department or the board of supervisors. For the city jail, it is usually the police department.

24.40. Policy. A definite, stated course or method of action which guides and determines present and future decision and actions.

24.41. Pretrial release. A procedure whereby an accused person who has been taken into custody is allowed to be unconfined before and during his/her trial.

24.42. Program. The plan or system through which a detention/correctional agency works to meet its goals; often this program requires a distinct physical setting, such as a detention facility.

24.43. Protective custody. A form of separation from the general population for inmates requesting or requiring protection from other inmates for reasons of health or safety. The inmate's status is reviewed periodically by the classification committee or other designated groups. (See administrative segregation and disciplinary detention)

24.44. Qualified health personnel. Physicians, dentists, and other professional and technical workers who by state law engage in activities that support, complement or supplement the functions of physicians and/or dentists and who are licensed, registered, or certified, as appropriate to their qualifications, to practice.

24.45. Release on bail. The release by a judicial officer of an accused person who has been taken into custody, upon the accused's promise to pay a certain amount of money or property if he/she fails to appear in court as required; the promise may or may not be secured by the deposit of an actual sum of money or property, and may involve a bonding agency.

24.46. Release on own recognizance (ROR). The release by a judicial officer of an accused person who has been taken into custody, upon the accused's promise to appear in court as required for criminal proceedings.

24.47. Responsible physician. A person licensed to practice medicine in the State of West Virginia with whom the facility enters into a contractual agreement to plan for and provide health services to the inmate population of the facility.

24.48. Safety equipment. This includes firefighting equipment, i.e., chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms.

24.49. Sally port. A square or rectangular enclosure situated either in the perimeter wall or fence of the facility or within the interior of the facility, containing gates or doors at

both ends, only one of which opens at a time. This method of entry and exit ensures there will be no breach in the perimeter or interior security of the facility.

24.50. Security or custody. The degree of restriction of inmate movement within a detention/correctional facility, usually divided into maximum, medium and minimum risk, levels.

24.51. Security devices. Locks, gates, doors, bars, fences, screens, ceilings, floors, walls and barriers used to confine and control inmates. Also electronic monitoring equipment, security alarm systems, security light units, auxiliary power supply and other equipment used to maintain facility security.

24.52. Security perimeter. The outer portion of a facility which actually provide for secure confinement of inmates. This perimeter may vary for individual inmates, depending upon their security classification.

24.53. Segregation. The confinement of an inmate to an individual cell that is separated from the general population. There are three (3) forms of segregation: administrative segregation, disciplinary detention and protective custody.

24.54. Self-insurer. Any parent agency or governmental jurisdiction which acts as the insurer. For public agencies, the self-insurance program is usually authorized by the legislature. A "memorandum of insurance" or similar document is required which acts as a policy, setting the limits of liability for various categories of risk, including deductible limits. Approval of the policy by a cabinet level official is also required.

24.55. Sheriff. The elected or appointed chief executive officer of a county law enforcement agency, who can serve several functions, including: responsibility for law enforcement in unincorporated areas, operation of the county jail and assignment as officers of the court.

24.56. Special management inmates. Persons whose behavior presents a serious threat to the safety and security of the facility, the inmate, the staff or the general inmate population. Special handling and/or housing is required to regulate their behavior.

24.57. Strip search. An examination that can include body cavities of an inmate's naked body for weapons, contraband and physical abnormalities. This also includes a thorough search of all the inmate's clothing while not being worn by the inmate.

24.58. Temporary release. A period of time during which an inmate is allowed to leave the program or institution and go into the community unsupervised for various purposes consistent with the

public interest.

24.59. Training. An organized, planned, and evaluated activity designed to achieve specific learning objectives. Training may occur on site, at an academy or training center, at an institution of higher learning, through contract service, at professional meetings, or through closely supervised on-the-job training. Meetings or professional associations are considered training when there is clear evidence of the above elements.

24.60. Volunteer. Persons from the community who participate the detention facility operations. They are selected on the basis of their skills or personal qualities to provide programs and services for the inmate population in recreation, counseling, education and religious activities. Their services are provided without cost to the facility.

24.61. Work release. A formal arrangement, sanctioned by law, whereby an inmate is permitted to leave confinement to maintain approved and regular employment in the community, returning to custody during nonworking hours.

STATE OF WEST VIRGINIA

REGIONAL JAIL and CORRECTIONAL FACILITY AUTHORITY

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GASTON CAPERTON
Governor

JACK J. ROOP
Executive Director

July 31, 1995

Comments received are attached. The Jail & Correctional Facility Standards Commission, in a meeting July 31, 1995, made no amendment to 95CSR1.

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

July 28, 1995

Frank Shumaker, Deputy Director
West Virginia Regional Jail and
Correctional Facility Authority
307 Jefferson Street
Charleston, West Virginia 25305

Dear Mr. Shumaker:

Thank you for your telephone call of last week and your request that I write a letter in support of your proposed amendments to jail standards. I wholeheartedly support the Authority's decision to enact a clean indoor air policy that would prohibit the use and possession of tobacco products at jail facilities throughout West Virginia.

As you know, secondhand smoke is a very real public health threat that causes death and disability to many people. The U.S. Environmental Protection Agency has in fact declared that secondhand smoke is a Group A carcinogen, a known cancer-causing agent. More than 3,000 Americans die each year due to lung cancer caused by secondhand smoke, and it is responsible for more than 30 times the number of lung cancer deaths as all regulated air pollutants combined.

As an employer, you are making a sound decision to protect both your employees and your residents from a known health hazard. Providing smoke-free facilities is an important means to protect the health of the inmates, especially, since they have no way to leave a smoke-filled environment if such measures are not enacted.

I applaud the Authority's initiative and decision in this regard. If I can be of further support, please give me a call.

Sincerely,

William T. Wallace, Jr., M.D, M.P.H.
Commissioner, Bureau for Public Health

WTW/djw

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July 27, 1995

Frank G. Shumaker, Deputy Director
Regional Jail and Correctional Facility Authority
Capital Complex
307 Jefferson Street
P. O. Box 50285
Charleston, WV 25305-0285

Dear Mr. Shumaker:

PrimeCare Medical, a division of PIHS, Inc. is totally supportive and positively in favor of a smoke free workplace. Our primary example of a smoke free workplace starts with the Corporate headquarters, Pennsylvania Institutional Health Services, Inc., in Harrisburg, Pennsylvania.

Each year more Americans die from smoking related diseases than die from AIDS, drug abuse, care accidents and homicide combined. The controversy about the facts are gone. We now know, we see, we treat and we bury 410,000 Americans each year who have died from the effects of cigarette smoking. **SIXTEEN PERCENT** of all deaths in the United States are related to smoking **(1 in 6)**.

In 1988, the U. S. Surgeon General reported that nicotine is just as addictive as heroin and cocaine. A **"hit"** of nicotine reaches the brain in seven (7) seconds, twice as fast as a syringe of heroin injected into the vein. On inspiration, the smoker draws nicotine into his lungs. The bloodstream picks up the nicotine and is quickly pumped by the heart right to the brain. As stated this sudden **blast of nicotine** reaches the brain in **seven (7) seconds** resulting in an instant **"high"**. Realizing the nicotine goes to other parts of the body, in a **pregnant woman**, this burst of nicotine also reaches the **fetus** through connective blood vessels. **The facts** pertaining to both **WOMEN** and **MEN** as per the long term affects of cigarette smoking are well documented. Breast cancer is no longer the leading cause of cancer death among women in 1987. Cigarette smoking is the #1 cause of cancer death in men. Further documentation of facts can be found in **Section 3.**

Organizations throughout the United States have adopted **smoke free workplace policy** and acknowledged that **second hand cigarette smoke** causes death from lung cancer, other cancers and cardiovascular disease in non smokers (Reference Section 1) . **Tobacco smoke**

continued . . .

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represents the single most significant source of **pollution** in most indoor air environments, particularly office work sites. The smoke produced from a cigarette consists of two (2) states: **gas** and **particulate**, containing over 4,000 chemicals.

In 1986 the **U. S. Surgeon General** issued his first report devoted entirely to the effects of involuntary smoking. This report reached three (3) major conclusions:

1. **INVOLUNTARY SMOKING** - (Exposure to second hand smoke) is a cause of disease, including lung cancer, in healthy non smokers.

2. The children of parents who smoke, as compared with the children of non smoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms and lower rates of increase in lung function as the lung matures.

3. The simple separation of smokers and non smokers within the same air space may reduce but does not eliminate, the exposure of non smokers to environmental tobacco smoke.

In **1993, THE ENVIRONMENTAL PROTECTION AGENCY (EPA)** classified second hand smoke as a **GROUP A CARCINOGEN**, a rating used only for substances (e.g, asbestos) proven to cause cancer in humans. This classification ends any doubt that second hand smoke poses a serious and unacceptable risk to non smokers.

PASSIVE SMOKING is estimated to cause approximately 3,000 lung cancer deaths in non smokers each year. **INVOLUNTARY SMOKING** has many non fatal but important effects breathing second hand smoke makes the eyes and nose burn, cause headaches and produce nausea, there are even a large number of people who object to the smell.

A safe and healthful work place is the ultimate **GOAL**. We are not concerned with the individuals self-destructive behavior of smoking, nor trying to force smokers to quit smoking. We are simply stating, **"SMOKING IS JUST NOT PERMITTED IN OR AROUND THE FACILITY."** A listing of organizations that have instituted **smoke free workplaces** and **almost entirely smoke free companies** appears in **Section 4**.

Indoor pollution produced by tobacco smoke is **higher** than most outdoor pollution. Cigarette smoke contains more than 40 toxic and cancer causing substances. Most ventilation systems are designed primarily to **CONSERVE ENERGY** rather than to **PRESERVE INDOOR AIR QUALITY** as a result, the smoke from buring cigarettes, pipes and cigars over whelms the ventilation system. **The non smoking workers face a cancer risk from the toxins**

continued . . .

in second hand smoke that is two hundred (200) times the maximum acceptable cancer risk set by Federal standards for environmental carcinogens in air, water or food.

We at PrimeCare realize when people are asked to change significant behaviors, they respond best if they understand why change is necessary. Providing employee and inmate education will facilitate compliance with the new smoke free policy. PrimeCare is here to assist in the whats and whys. **The sole purpose of the SMOKE FREE WORKPLACE is to provide clean air inside company facilities and to protect all employees and inmates from the harmful effects of breathing SECOND HAND TOBACCO SMOKE.**

Offering stop smoking programs to employees and inmates is a key step in the process of becoming a smoke free workplace. It helps individuals adjust to the new policy and, for those who choose to stop smoking completely, smoking interventions at work provide welcome support and encouragement.

Interventions per smoking yield a **high return on investment**. They are second only to seat belt programs in terms of cost effectiveness. Smoking related health care costs and lost productivity in the United States total approximately **Sixty-Five ($65,000,000,000.00) billion annually**, not considering how smoking affects non smokers.

No single program will work for everyone. A variety of programs should be available to the facility. In general, it is best to offer a variety of programs on an on going basis beginning with **self help approaches**. **PRIMECARE MEDICAL** will utilize **audio tapes, group programs** and **individual counseling** following the standards set by the **NATIONAL CENTER FOR HEALTH EDUCATION** for evaluating smoking cessation programs, complete cessation and continued abstinence from smoking for one year should be the should be the primary criteria of success **based on all participants who enter the program**. The largest threats to the viability of the tobacco industry is in the **PUBLIC'S** growing intolerance and **PRIMECARE'S** increased educational awareness of the **DANGERS OF INVOLUNTARY SMOKING.** PrimeCare Medical has embarked on a crusade to assist you in a **SAFE, HEALTHFUL AND SMOKE FREE WORKPLACE.**

Sincerely,

Carl A. Hoffman, Jr., D.O., CCHP
President

CAH/cew
Attachments
cc: R. Smith
file

Coalition for a Tobacco-Free West Virginia

July 27, 1995

Mr. Frank Shumaker
Deputy Director
West Virginia Regional Jail and
Correctional Facility Authority
307 Jefferson Street
Charleston, WV 25305

Dear Mr. Shumaker:

I am writing in support of the Authority's draft clean indoor air regulation that would provide for smoke-free jail and prison facilities throughout West Virginia.

Secondhand smoke is a major public health concern for every citizen of our state. The U.S. Environmental Protection Agency has declared that secondhand smoke is a Group A carcinogen, a known cancer-causing agent. The same classification has been given to asbestos and radon. Many who suffer from the effects of secondhand smoke are subjected to it by co-workers and people they don't know through encounters in malls, restaurants and other public places.

As an employer, you are making a sound decision to protect your employees from a known health hazard. Under common law, workers have the right to a safe and healthful worksite. Going smoke-free will protect your employees and ensure they are not forced to take legal action to protect themselves at the work place.

In addition to protecting your employees, a smoke-free environment will protect inmates who do not have the choice to leave a smoke-filled environment. I strongly support the Authority's efforts to protect its employees and inmates from this known health hazard.

Sincerely,

Sharon Lansdale /BW

Sharon Lansdale, Chair
Coalition for a Tobacco-Free West Virginia

600 D Street, Second Level • South Charleston, WV 25303 •304-744-9842 • Fax: 304-744-9889

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

Mr. Frank Shumaker
Deputy Director
West Virginia Regional Jail and
Correctional Facility Authority
307 Jefferson Street
Charleston, WV 25305

Dear Mr. Shumaker,

I understand the Authority is considering a clean indoor air policy for smoke-free jail and prison facilities in West Virginia.

Secondhand smoke is the third leading preventable cause of death in the United States. It contains over 4,000 chemicals, of which over 40 are known to cause cancer in humans. There is no safe level of exposure.

The Tobacco Control Program would like to offer its assistance in educating personnel and inmates about the hazards of secondhand smoke. Enclosed are several fact sheets that will help you in this effort.

If you need further assistance, please contact me at 558-0644. Thank you for taking this crucial step in protecting West Virginians from this health hazard.

Sincerely,

Joyce Holmes

Joyce Edwards Holmes
Program Manager
Tobacco Control Program

DIVISION OF HEALTH PROMOTION
OFFICE OF EPIDEMIOLOGY AND HEALTH PROMOTION
BUREAU OF PUBLIC HEALTH
1411 Virginia Street, East
Charleston, West Virginia, 25301-3013
Telephone: (304) 558-0644 Fax: (304) 558-1553

Americans for Nonsmokers' Rights

Helping you breathe a little easier

PROTECTING NONSMOKERS FROM SECONDHAND SMOKE

August 1992

- Secondhand smoke kills 53,000 nonsmokers in the U.S. each year, making it the third leading cause of preventable death in the country. For every eight smokers the tobacco industry kills, they take one nonsmoker with them. (Glantz, Stanton A., Ph.D., and W. Parmley, MD, "Passive Smoking and Heart Disease," *AHA Circulation*, Vol. 83, No. 1, January 1991)

- The Environmental Protection Agency has classified environmental tobacco smoke (ETS) a Class A Carcinogen—a substance known to cause cancer in humans for which there is no safe level of exposure. (EPA Review Draft, *Health Effects of Passive Smoking*, 1990)

- The simple separation of smokers and nonsmokers within the same air space may reduce, *but does not eliminate*, the exposure of nonsmokers to environmental tobacco smoke. (*The Health Consequences of Involuntary Smoking: A Report of the U.S. Surgeon General*, 1986. *Emphasis added.*)

- Environmental tobacco smoke meets the criteria of the Occupational Safety & Health Administration (OSHA) for classifying substances as potential occupational carcinogens. For that reason, both the Environmental Protection Agency and the National Institute of Occupational Safety & Health recommend that smoking be eliminated in all workplaces, or be restricted to private rooms that have a separate ventilation system which is exhausted directly outside. (*Indoor Air Facts: Environmental Tobacco Smoke*, Environmental Protection Agency, June 1989; and *Environmental Tobacco Smoke in the Workplace*, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, June 1991)

- Over 500 communities in the U.S. have enacted ordinances restricting smoking in workplaces, restaurants, and other public places. To date, 42 communities have passed ordinances which completely eliminate smoking in all workplaces and/or restaurants. (Americans for Nonsmokers' Rights)

- In workplaces that permit smoking, 43.5% of nonsmoking employees report some or moderate discomfort and 15.7% report great discomfort from secondhand smoke. Even 15% of smoking employees report some degree of discomfort from secondhand smoke. (*Morbidity and Mortality Weekly Report*, Centers for Disease Control, 5/22/92)

- Total smoking bans have been voluntarily established in 34% of workplaces, compared with 7% in 1987 and 2% in 1986. Another 34% restrict smoking in all common areas. As a result, employee morale has improved by 69%. ("Smoking in the Workplace: 1991," *Bulletin to Management*, Bureau of National Affairs, August 29, 1991)

- Ventilation standards established by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) treat tobacco smoke odor as an irritant, rather than as a health risk. These standards are designed to remove the odor rather than the carcinogens and other toxins. Ventilation systems would need to be improved 270 times in typical buildings to reduce cancer risks to accepted federal standards would create a virtual windstorm indoors. ("Smoking in the Workplace: Ventilation," *Smoking Policy: Questions and Answers*, National Cancer Institute.)

2530 San Pablo Avenue, Suite J • Berkeley, California 94702 • (510) 841-3032 / FAX (510) 841-7702

Facts About Secondhand Smoke

Some of the key facts about secondhand tobacco smoke and its dangers are summarized below. Use them to inform your family and friends and to work for smoke-free policies in your community.

General

Secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers. Each year secondhand smoke kills an estimated 3,000 adult nonsmokers from lung cancer.

Secondhand smoke causes 30 times as many lung cancer deaths as all regulated air pollutants combined.

Secondhand smoke causes other respiratory problems in nonsmokers: coughing, phlegm, chest discomfort, and reduced lung function.

For many people, secondhand smoke causes reddening, itching, and watering of the eyes. About eight out of 10 nonsmokers report they are annoyed by others' cigarette smoke.

More than 4,000 chemical compounds have been identified in tobacco smoke. Of these, at least 43 are known to cause cancer in humans or animals.

At high exposure levels, nicotine is a potent and potentially lethal poison. Secondhand smoke is the only source of nicotine in the air.

Nonsmokers exposed to cigarette smoke have in their body fluids significant amounts of nicotine, carbon monoxide, and other evidence of secondhand smoke.

Three out of four nonsmokers have lived with smokers, and nearly half (45 percent) are worried that secondhand smoke might cause them serious health problems.

More than 90 percent of Americans favor restricting or banning smoking in public places.

Forty-six states and the District of Columbia in some manner restrict smoking in public places. These laws range from limited prohibitions, such as no smoking on school buses, to comprehensive clean indoor air laws that limit or ban smoking in virtually all public places.

Laws restricting smoking in public places have been implemented with few problems and at little cost to state and local government.

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

CDC
CENTERS FOR DISEASE CONTROL AND PREVENTION

Legal liability for permitting smoking

Even without the new evidence now available in the EPA Report, workers have long been able to recover compensation for injuries caused by exposure to tobacco smoke. So far, they have been successful under a variety of legal theories and doctrines:

- **common law and negligence:** when an employer fails to provide a reasonably safe and healthful workplace, even in the absence of a statute;
- **workers' compensation:** designed to compensate workers for job-related injuries and health problems;
- **unemployment insurance:** protects workers who lose their jobs through no fault of their own;
- **disability:** to protect workers made unable to work; and even
- **discrimination:** unfair retaliation against nonsmokers

In addition, a number of rulings held that persons who are sensitive to tobacco smoke are "handicapped persons." That meant that entities covered by the law at the time — governments and large recipients of federal funds — had to make a reasonable accommodation to protect such people.

Since the new Americans With Disabilities Act (ADA) imposes the same obligations on virtually all businesses, many more legal actions under this theory are likely to be filed and to be successful. Already, ASH has filed an ADA complaint against an airport, and ADA lawsuits have been filed against McDonald's and other fast-food outlets.

The EPA Report is likely to make it much easier for employees to prove the harmful effect of ETS in all of the types of cases outlined above. It is also likely to open the door for new types of suits.

For example, a child brought into the smoking section of a fast-food restaurant or other public place could sue the owner if he or she suffered an asthmatic attack or other medical problem as a result. In such a suit, the carelessness of the adult who brought the child into the smoking section is not a valid legal defense for the business.

Similar legal actions could also be brought on behalf of young children who suffered medical problems as a result of exposure in the smoking sections of airplanes on overseas flights.

Some of the legal precedents involving exposure to tobacco smoke are discussed or cited on this page.

Cases of Particular Interest

Smoke drifting up from a first-floor smoking area into a second-floor classroom was enough to trigger chronic lung disease in a teacher who was awarded $29,999.[1]

A waiter who suffered a heart attack as a result of working in a smoke-filled bar received $95,000.[2]

A secretary was held to be "environmentally disabled" because she could not work where she was exposed to tobacco smoke. Her employer paid her $50,000 plus $500/mo for the rest of her life, even though she was free to work in any other smoke-free office.[3]

Pointing out that smoking was banned in one room because it adversely affected a computer, a judge, even prior to evidence of long-term health hazards from ETS, ordered a smoking ban in the office of a smoke-sensitive employee.[4]

An Army employee sensitive to tobacco smoke was a "handicapped person" under the Federal Rehabilitation Act, and his employer was required to make a reasonable accommodation to his handicap.[5]

A government employee had no right to smoke, and could be fired for smoking even one cigarette on his own time off the job.[6]

1. Schiller v. Los Angeles Unified School District PAS 654, PAS 1750, LA 607109, Calif. Workers' Compensation Appeals Board, 3/20/92; ■ 2. Ubhi v. State Compensation Insurance Fund, Cat 'N' Fiddle Restaurant (Calif. Workers' Compensation Appeals Board 1990); ■ 3. Parodi v Merit Systems Protection Board 690 F2d 731 (9th Cir. 1982); ■ 4. Shimp v. New Jersey Bell Telephone Company, 368 A.2d 408 (1976); ■ 5. Pletten v Department of the Army, U.S. Merit Systems Protection Board Nos. CH07528010099, CH01520 2901 (1981); ■ see also Vickers v. The Veterans Administration, 548 F. Supp 85 (1982); ■ Weir v. Office of Personnel Management (Merit Systems Protection Board, Dallas Regional Office, Docket No. DA 831L3610314, 1986); ■ 6. Grusendorf v. City of Oklahoma City, 816 F2d 539 (10th Cir. 1987).

COMMON LAW: Henrzel v. Singer 183 Cal. Rptr 159 (App. 1982); ■ Smith v. Western Electric Company 643 S.W. 2d (Mo. App. 1983).

NEGLIGENCE: McCarthy v. Department of Social Health Services, 110 Wash. 2d 812, 759 P.2d 351 (1988).

WORKMEN'S COMPENSATION: Brooks v. Trans World Airlines et al. California Workmen's Compensation Appeals Board, Case No. 76 SF 257-975 (1977); ■ Schober v. Mountain Bell Telephone N.M. App. 630 P.2d 1231 (1981); ■ Batchelor v. Fresno County (California) (1982); ■ In the Matter of the Compensation of Marlene W. Ritchie., Oregon Workers' Compensation Board, WCB Case No. 84-07248, Claim No. D690568, WCD No. None, S.S.N. 543-46-5627 (1985); ■ In the Matter of the Compensation of Mary A. Downey, Oregon Workers' Compensation Board WCB Case No. 83-01911, Claim No. D605190, DOI 10-13-82, WCD File No. C151790, SSN 543-34-0883 (1985); ■ J and R Elec. No. 0853 2802 (N.Y. Workers' Comp. Bd. Dec 1988) (WESTLAW, MWC-ADMIN database, 1988 WL 191704); ■ Johannesen v. New York City Department of Housing Preservation and Development 154 A.D. 2d 753, 546 N.Y.S. 2d 40 (1989); ■ Kufahl v. Wisconsin Bell, Inc., (Wisconsin Labor and Industrial Review Commission, Claim No. 88-000676, 1990) ■ Bena v. Massachusetts Turnpike Authority (Report of Administrative Judge of the Department of Industrial Accident (Dianne Solomon) Board No. 039220B8, October 21, 1991); ■ Serwert v. The Child Center (Workers' Compensation Board of Indiana Application Number 112490, January 6, 1992).

UNEMPLOYMENT INSURANCE: Hochman, N.Y.S. Department of Labor, F.A. Russo Incorp. S.S.A. #100-32-1465, Appeal #233,526, Referee 76-329-83 (1976); ■ Meyer v. C.P. Clare and Company et. al., Industrial Commission of Idaho DOE 615-78 (1978); ■ Alexander v. Unemployment Ins. Appeals Bd. 104 Cal. App. 3d 97; Cal. Rptr 411 (1980); ■ Ennis and Strochmans Bros., Pennsylvania Unemployment Compensation Board of Review, Appeal No. B-83-2-R-24, Decision No. B-218501 (1983); ■ McCrocklin v. Employment Development Department et al. 156 Cal. App. 3d 1067, 205 Cal. Rptr 156 (Cal. App. 2 Dist., Div.6. 1984); ■ Lapham v. Commonwealth Unemployment Compensation Board, 519 A.2d 1101 (Pa. Cmwlth. 1987).

DISCRIMINATION AGAINST NONSMOKERS: Tari Way v. Area Agency on Aging Initial Determination, EOC Case #2393, Equal Opportunities Comm., City of Madison, Wisconsin (1977); ■ Department of Fair Employment and Housing v. Fresno County, California Fair Employment and Housing Commission Case No. FEP81-82 C80009ph (1984); ■ Department of Fair Employment and Housing v. County of Fresno Department of Social Services Case Nos. FEP82-82 C9-0084p, FEP83-83 C9-0143re N21643 FEP82-83 C9-0085p, FEP82-83 C9-0199re N21652 (1985); ■ County of Fresno v. Fair Employment and Housing Commission of the State of California; ■ Brooks and Capo, Real Parties in Interest, Ct of App. State of California, Fifth App. Dist, 266 Cal. App. 3d 1541, 277 Cal Rptr 555. January 23, 1991).

FEDERAL REHABILITATION ACT CASES (DISABILITY AND HANDICAP): Flanikan v. Office of Personnel Management, U.S. Merit Systems Protection Board, Dallas Field Office. No. DA831L10001. (1980); ■ White v. United States Postal Service (Equal Employment Opportunity Commission, Appeal No. 01853426, 1987).

This is a special issue of the *ASH Smoking and Health Review* (ISSN 1046-907X0). ASH is a national nonprofit, tax-exempt organization concerned with the problems of smoking and the rights of nonsmokers. ASH is entirely supported by tax-deductible contributions, and regular contributors receive the *ASH Review*. Printed portions of the *ASH Review* may be reprinted with credit to ASH.

Organizations With More Information

Listed below are selected organizations that provide information about the effects of secondhand smoke, assistance in establishing smokefree policies, and advice on stopping smoking.

Office on Smoking and Health
Centers for Disease Control and Prevention
Mailstop K-50
4770 Buford Highway, N.E.
Atlanta, GA 30341-3724
1-800-CDC-1311 (copies of action guide on secondhand smoke)
(404) 488-5705 (other information)
—Information about smoking and health including pamphlets, posters, and scientific reports.

Action on Smoking and Health
2013 H Street, N.W.
Washington, DC 20006
(202) 659-4310
—Information about a variety of smoking and health issues, with a focus on nonsmoking laws and policies.

American Cancer Society
1599 Clifton Road, N.E.
Atlanta, GA 30329
1-800-ACS-2345
—Information and education programs on tobacco and secondhand smoke; individual and group stop-smoking programs.

American Heart Association
National Center
7272 Greenville Avenue
Dallas, TX 75231
(214) 373-6300
Or contact your local Heart Association in the white pages of the phone book.
—Smoking information and education programs for schools, workplaces, and health care facilities.

American Lung Association
1740 Broadway
New York, NY 10019-4274
(212) 315-8700
Or contact your local Lung Association in the white pages of the phone book.
—Information and programs on smoking prevention, cessation, and the protection of nonsmokers' rights.

Americans for Nonsmokers' Rights
Suite J
2530 San Pablo Avenue
Berkeley, CA 94702
(510) 841-3032
—Information to help organizations and individuals pass clean indoor air ordinances, implement workplace regulations, and develop workplace smoking policies.

United States
Environmental Protection
Agency
Washington, DC 20460

July 1993
402-F-93-004

Air and Radiation (6203J)

Official Business
Penalty for Private Use $300

SECONDHAND SMOKE

What You Can Do About Secondhand Smoke

As Parents,  Decisionmakers, 

and  Building Occupants

EPA

What Is Secondhand Smoke?

WHAT IS SECONDHAND SMOKE?

- Secondhand smoke is a mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from the lungs of smokers.
- This mixture contains more than 4,000 substances, more than 40 of which are known to cause cancer in humans or animals and many of which are strong irritants.
- Secondhand smoke is also called environmental tobacco smoke (ETS); exposure to secondhand smoke is called involuntary smoking, or passive smoking.

SECONDHAND SMOKE CAN CAUSE LUNG CANCER IN NONSMOKERS

- Secondhand smoke has been classified by the U.S. Environmental Protection Agency (EPA) as a known cause of lung cancer in humans (Group A carcinogen).
- Passive smoking is estimated by EPA to cause approximately 3,000 lung cancer deaths in nonsmokers each year.

SECONDHAND SMOKE IS A SERIOUS HEALTH RISK TO CHILDREN

- The developing lungs of young children are also affected by exposure to secondhand smoke.
- Infants and young children whose parents smoke are among the most seriously affected by exposure to secondhand smoke, being at increased risk of lower respiratory tract infections such as pneumonia and bronchitis. EPA estimates that passive smoking is responsible for between 150,000 and 300,000 lower respiratory tract infections in infants and children under 18 months of age annually, resulting in between 7,500 and 15,000 hospitalizations each year.
- Children exposed to secondhand smoke are also more likely to have reduced lung function and symptoms of respiratory irritation like cough, excess phlegm, and wheeze.
- Passive smoking can lead to a buildup of fluid in the middle ear, the most common cause of hospitalization of children for an operation.
- Asthmatic children are especially at risk. EPA estimates that exposure to secondhand smoke increases the number of episodes and severity of symptoms in hundreds of thousands of asthmatic children. EPA estimates that between 200,000 and 1,000,000 asthmatic children have their condition made worse by exposure to secondhand smoke. Passive smoking may also cause thousands of nonasthmatic children to develop the condition each year.

OTHER HEALTH IMPLICATIONS

- Exposure to secondhand smoke causes irritation of the eye, nose, and throat.
- Passive smoking can also irritate the lungs, leading to coughing, excess phlegm, chest discomfort, and reduced lung function.
- Secondhand smoke may affect the cardiovascular system, and some studies have linked exposure to secondhand smoke with the onset of chest pain.

For More Information

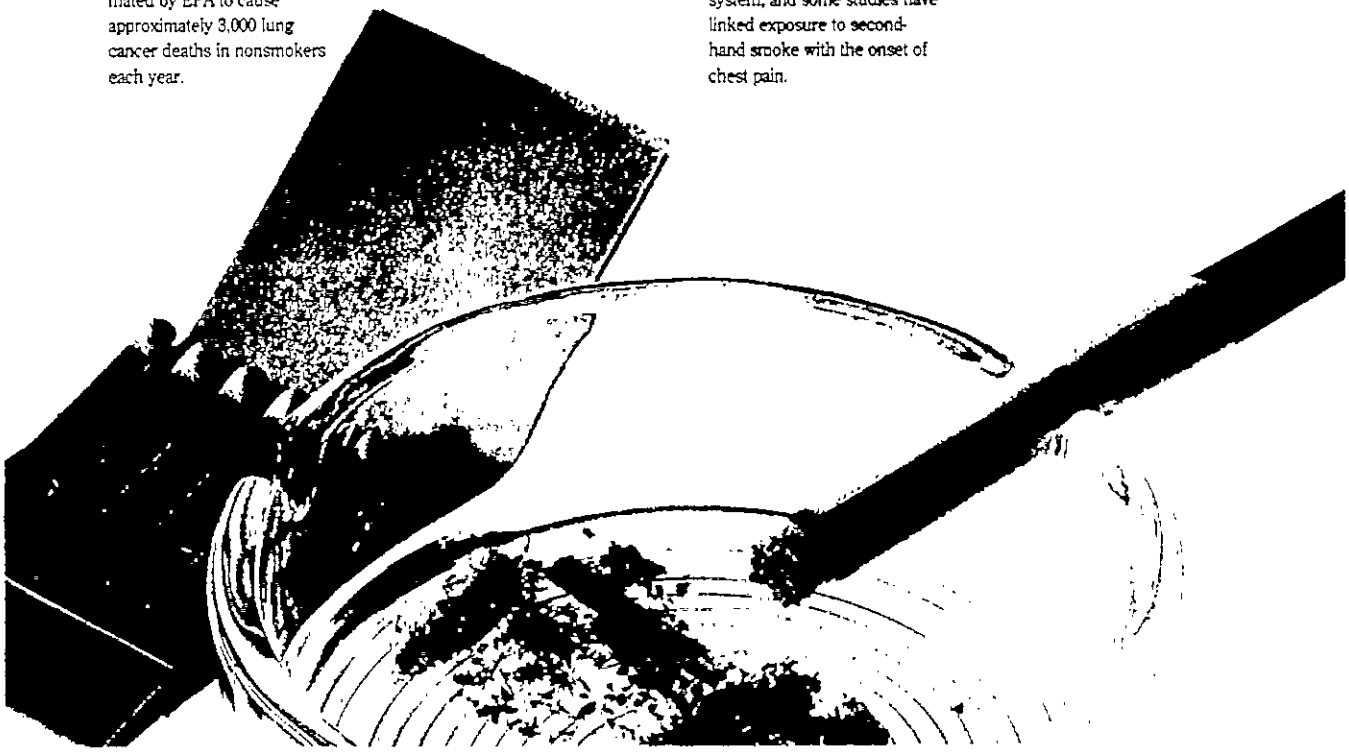
U.S. Environmental Protection Agency
Indoor Air Quality Information Clearinghouse (IAQ INFO)
P. O. Box 37133
Washington, DC 20013-7133
1-800-438-4318

Office on Smoking and Health/Centers for Disease Control and Prevention
Mail Stop K-50
4770 Buford Highway, N.E.
Atlanta, GA 30341-3724
404-488-5705

National Cancer Institute
Building 31, Room 10A24
9000 Rockville Pike
Bethesda, MD 20892
1-800-4-CANCER

National Heart, Lung, and Blood Institute
Information Center
P. O. Box 30105
Bethesda, MD 20824-0105
301-951-3260

National Institute for Occupational Safety and Health
4676 Columbia Parkway
Cincinnati, OH 45226-1998
1-800-35-NIOSH



Protecting You

IN THE HOME

• Don't smoke in your house or permit others to do so.

• If a family member insists on smoking indoors, increase ventilation in the area where smoking takes place. Open windows or use exhaust fans.

• Do not smoke if children are present, particularly infants and toddlers. They are particularly susceptible to the effects of passive smoking.

• Don't allow baby-sitters or others who work in your home to smoke in the house or near your children.

WHERE CHILDREN SPEND TIME

EPA recommends that every organization dealing with children have a smoking policy that effectively protects children from exposure to environmental tobacco smoke.

• Find out about the smoking policies of the day care providers, pre-schools, schools, and other care-givers for your children.

• Help other parents understand the serious health risks to children from secondhand smoke. Work with parent/teacher associations, your school board and school administrators, community leaders, and other concerned citizens to make your child's environment smoke free.

IN THE WORKPLACE

EPA recommends that every company have a smoking policy that effectively protects nonsmokers from involuntary exposure to tobacco smoke. Many businesses and organizations already have smoking policies in place but these policies vary in their effectiveness.

• If your company does not have a smoking policy that effectively controls secondhand smoke, work with appropriate management and labor organizations to establish one.

• Simply separating smokers and nonsmokers within the same area, such as a cafeteria, may reduce exposure, but nonsmokers will still be exposed to recirculated smoke or smoke drifting into nonsmoking areas.

• Prohibiting smoking indoors or limiting smoking to rooms that have been specially designed to prevent smoke from escaping to other areas of the building are the two options that will effectively protect nonsmokers. The costs associated with establishing properly designed smoking rooms vary from building to building, and are likely to be greater than simply eliminating smoking entirely.

• If smoking is permitted indoors, it should be in a room that meets several conditions:

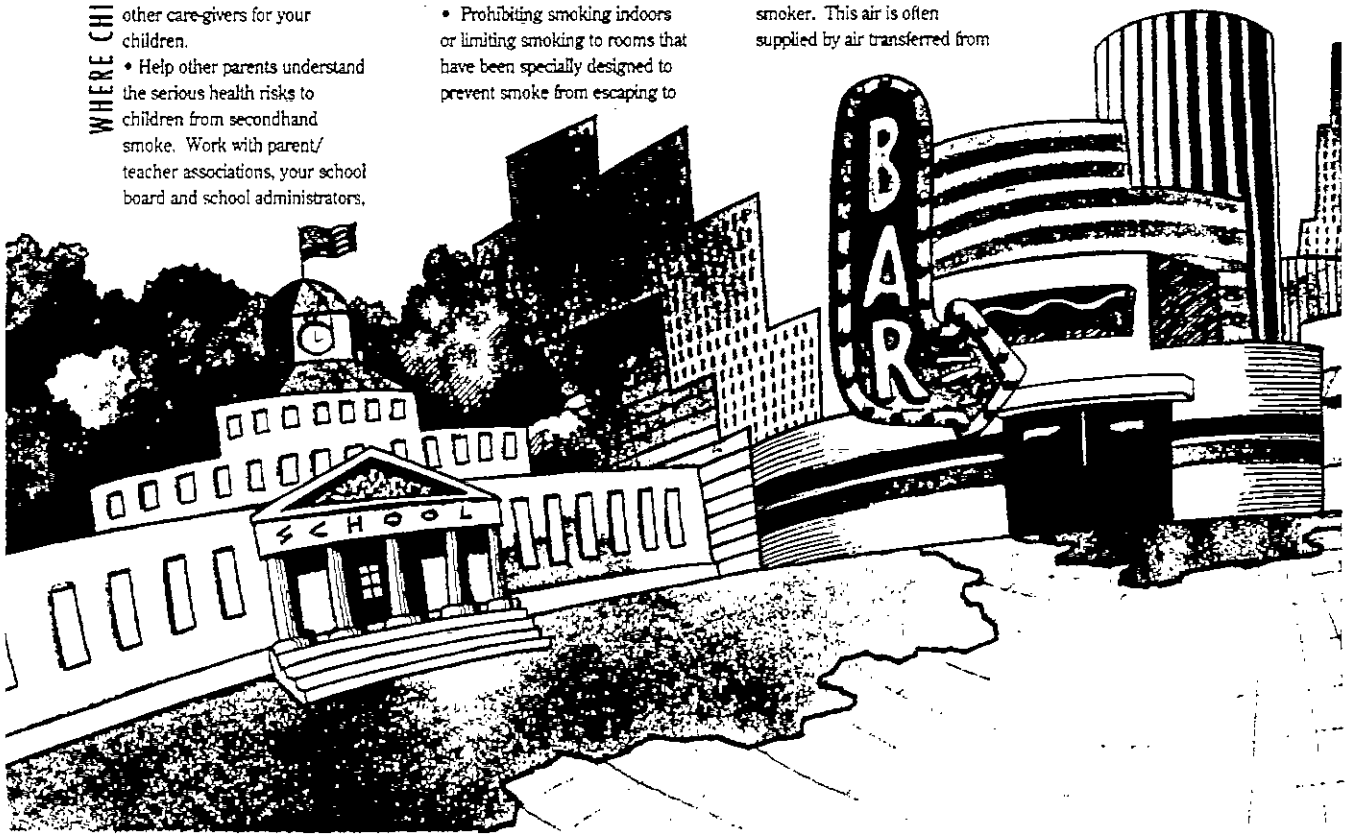
  • Air from the smoking room should be directly exhausted to the outside by an exhaust fan. Air from the smoking room should not be recirculated to other parts of the building. More air should be exhausted from the room than is supplied to it to make sure ETS doesn't drift to surrounding spaces.

  • The ventilation system should provide the smoking room with 60 cubic feet per minute (CFM) of supply air per smoker. This air is often supplied by air transferred from other parts of the building, such as corridors.

  • Nonsmokers should not have to use the smoking room for any purpose. It should be located in a non-work area where no one, as part of his or her work responsibilities, is required to enter.

• Employer-supported smoking cessation programs are an important part of any smoking policy. Approximately 25 percent of American adults still smoke. Many smokers would like to quit, but cigarette smoking is physically and psychologically addictive, and quitting is not easy. While working in a smoke-free building may encourage some smokers to quit, a goal of any smoking policy should be to actively support smokers who want to kick the habit.

• If there are designated outdoor smoking areas, smoking should not be permitted right outside



r Health

What You Can Do to Reduce the Health Risks of Passive Smoking

the doors (or near building ventilation system air intakes) where nonsmokers may have to pass through smoke from smokers congregated near doorways. Some employers have set up outdoor areas equipped with shelters and ashtrays to accommodate smokers.

IN RESTAURANTS AND BARS

- Know the law concerning smoking in your community. Some communities have banned smoking in places such as restaurants entirely. Others require separate smoking areas in restaurants, although most rely on simply separating smokers and nonsmokers within the same space, which may reduce but not eliminate involuntary exposure to ETS.
- If smoking is permitted, placement of smoking areas should be determined with some knowledge of the ventilation characteristics of the space to minimize nonsmoker exposure. For example, nonsmoking areas should be near air supply ducts while smoking areas should be near return registers or exhausts.
- Ask to be seated in nonsmoking areas as far from smokers as possible.
- If your community does not have a smoking control ordinance, urge that one be enacted. If your local ordinances are not sufficiently protective, urge your local government officials to take action.
- Few restrictions have been imposed in bars where drinking and smoking seem to go together. In the absence of state or local laws restricting smoking in bars, encourage the proprietor to consider his or her nonsmoking clientele, and frequent places that do so.

IN OTHER INDOOR SPACES

- Does your state or community have laws addressing smoking in public spaces? Many states have laws prohibiting smoking in public facilities such as schools, hospitals, airports, bus terminals, and other public buildings. Know the law. Take advantage of laws designed to protect you. Federal laws now prohibit smoking on all airline flights of six hours or less within the U.S. and on all interstate bus travel.

A Special Message for Smokers

This is a difficult time to be a smoker. As the public becomes more aware that smoking is not only a hazard to you but also to others, nonsmokers are becoming more outspoken, and smokers are finding themselves a beleaguered group.

If you choose to smoke, here are some things you can do to help protect the people close to you:

- Don't smoke around children. Their lungs are very susceptible to smoke. If you are expecting a child, quit smoking.
- Take an active role in the development of your company's smoking policy. Encourage the offering of smoking cessation programs for those who want them.
- Keep your home smoke free. Nonsmokers can get lung cancer from exposure to your smoke. Because smoke lingers in the air, people may be exposed even if they are not present while you smoke. If you must smoke inside, limit smoking to a room where you can open windows for cross-ventilation. Be sure the room in which you smoke has a working smoke detector to lessen the risk of fire.
- Test your home for radon. Radon contamination in combination with smoking is a much greater health risk than either one individually.
- Don't smoke in an automobile with the windows closed if passengers are present. The high concentration of smoke in a small, closed compartment substantially increases the exposure of other passengers.

More than two million people quit smoking every year, most of them on their own, without the aid of a program or medication. If you want to quit smoking, assistance is available. Smoking cessation programs can help. Your employer may offer programs, or ask your doctor for advice.

EPA

General Surgery | Vascular Surgery | Gastrointestinal Endoscopy

Charleston Surgical Group, Inc.

Eric P. Mantz, MD, FACS
Daniel S. Foster, MD, FACS

3100 MacCorkle Avenue, SE
Suite 504
Charleston, West Virginia 25304

Telephone 346-0479
If no answer call 357-6321

S. Willis Trammell, MD, FACS
Todd A. Witsberger, MD

July 13, 1995

Mr. Frank G. Shumaker
West Virginia Regional Jail and Facility Authority
307 Jefferson Street
Charleston, WV 25305

Dear Mr. Shumaker:

As a physician in Charleston and a resident in Kanawha County I strongly support the move to initiate a clean indoor air policy at the new regional jail. The data regarding disease and death related to second-hand smoke are quite compelling and have led to clean indoor policies in numerous settings throughout the country over the last few years. Not only are the nonsmokers or innocent victims protected by such policies, hopefully these regulations will also encourage those who already smoke to find a way to stop their deadly habit. For this reason it is also important to have the psychological support and availability of smoking cessation classes to make the transition to a clean indoor air facility more acceptable.

As a long time volunteer for the American Cancer Society I can assure you that they strongly support these efforts and will be ready to help you in any way to make it easier for you and all those affected. It takes courage to make such decisions, but there is no doubt that it is done in the best interest of all those who live and work in the new jail.

For your interest I have enclosed a recent article which can give you a wealth of factual information about this problem. Please feel free to contact me if you have any further questions.

Sincerely yours,

Daniel S. Foster, M.D.

DSF/mbw

SECONDHAND SMOKE IS IT A HAZARD?

In the 1950's and 60's, as scientists piled up a mountain of evidence on the life-threatening health consequences of smoking, the tobacco industry mounted a fierce and sophisticated campaign to keep doubt alive in the public mind.

The effort ultimately flopped; even scientists funded by tobacco-industry money today concede that smoking is bad for you. But it did succeed in putting off that day of reckoning when everyone acknowledged the hazard. That delay bought many years of robust sales.

The industry is at it again, only this time the target is secondhand smoke. A review of the record shows that tobacco companies are doing exactly what they did with "firsthand" smoke: They're using a little bit of scientific uncertainty and a lot of public relations to suggest there is still a serious debate about the health hazards of breathing smoke from other people's cigarettes.

At one time, such a controversy was real. When we reported on the subject 10 years ago, we described the evidence as "sparse and often conflicting." That's no longer true. A number of studies make a consistent case that secondhand smoke, like firsthand smoke, causes lung cancer. Many reputable groups that have inspected the evidence have reached this conclusion, including the U.S. Surgeon General's office, the National Research Council, the National Institute of Occupational Safety and Health, the International Agency for Research on Cancer, and the U.S. Occupational Safety and Health Administration (OSHA).

Other studies have found strong links between passive smoking and a host of other ills, such as asthma and bronchitis in children. Furthermore, evidence is accumulating that secondhand smoke contributes to the development of heart disease.

Early in 1993, the U.S. Environmental Protection Agency, after a painstaking and wide-ranging scientific review, declared secondhand smoke a known—not just "probable," or "possible"—human carcinogen. The EPA estimated that such smoke is responsible for several thousand cases of lung cancer in U.S. nonsmokers each year. Passive smoke joins a select company of only about a dozen other environmental pollutants in this risk category.

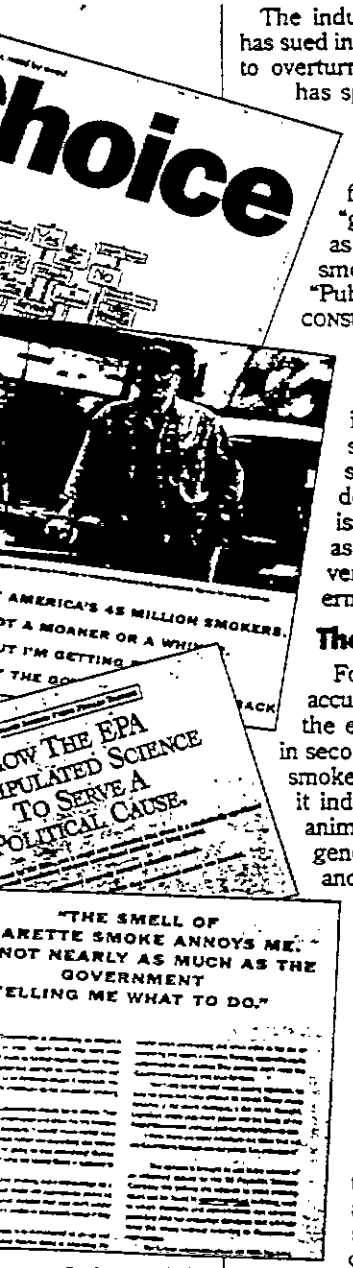
For the $48-billion U.S. tobacco industry, the EPA decision has been the worst setback since 1964, when the Surgeon General first declared that smoking causes cancer.

The EPA decision added momentum to widespread efforts to limit or ban smoking in public or at work. It gave employers a reason to fear workers' compensation claims based on exposure to workplace smoke. Businesses and organizations ranging from Taco Bell to the U.S. military have already banned or restricted smoking in their facilities. Seventy percent of the nation's shopping malls are now smoke-free.

Several states, including California, Maryland, Utah, Vermont, and Washington, have proposed or enacted strict controls on workplace smoking. As this report went to press, OSHA was considering nationwide rules that would, in effect, ban smoking on the job except in specially ventilated areas. Pending in the courts are at least two lawsuits brought against tobacco companies by relatives of nonsmokers who died of lung cancer after long exposure to secondhand smoke at work.

All those developments have helped to turn smoking from a public activity to a practice increasingly indulged in private. What's more, they have helped persuade many smokers to cut back or quit. The smoking rate has dropped significantly, from one in three adults in 1980 to one in four today, cutting deeply into the tobacco industry's domestic market.

"The tobacco merchants claim there's still a controversy. We don't buy it."



Going public Ads from tobacco companies have tried to recast the econdhand smoke issue in terms of rights and courtesy, while casting doubt on scientific evidence. These and similar ads have appeared in many newspapers nd magazines during the past year.

The industry is fighting back. It has sued in Federal court in an effort to overturn the EPA's decision. It has spent millions to block or roll back state and local public-smoking restrictions. Its public-relations firms are creating bogus "grassroots" organizations as fronts for lobbying against smoking restrictions. (See "Public-Interest Pretenders," CONSUMER REPORTS, May 1994.)

In its most visible effort, a months-long national advertising campaign, the industry has attempted to spread doubt about the science behind the EPA decision and to recast the issue of secondhand smoke as one of individual rights versus an overzealous government agency.

The evidence?

For years, researchers have accumulated information about the effects of the compounds in secondhand smoke. Cigarette smoke and tars condensed from it induce cancer in laboratory animals. The smoke causes genetic mutations in bacteria, another common test for carcinogenic potential. And several of its components are known or probable human carcinogens.

If scientists had only this animal and laboratory evidence to go on, secondhand smoke would still qualify as a "probable" or "possible" human carcinogen. But in addition, tobacco smoke is among a handful of substances—asbestos, vinyl chloride, and radon are others—for which abundant human evidence exists. That evidence comes from epidemiology, the study of disease patterns in human populations. It's the scientific field responsible for identifying all the known human carcinogens.

There are 33 published epidemiological studies of secondhand smoke, 13 of which were conducted in the U.S. Most used standard epidemiological technique: They looked at nonsmoking women who developed lung cancer, to see whether they were more likely to be married to smokers than were women who didn't get the disease. (Other researchers studied cancer rates in people exposed to smoke at work or from other family members; a few also studied husbands of women smokers.)

In all such studies, it is difficult to accurately measure every variable. Most of the smoking occurred decades ago, and the details can't be learned. Some women whose husbands didn't smoke might still have breathed smoke at work or with friends. And some wives of smokers might have been able to avoid their spouses' smoke. But both of those factors would tend to hide any true relationship between exposure and disease. So, if anything, the studies should underestimate the risk of secondhand smoke.

Nevertheless, 26 of the 33 studies indicated a link between secondhand smoke and lung cancer. Those studies estimated that people breathing secondhand smoke were 8 to 150 percent more likely to get lung cancer sometime later. Of the remaining seven studies, one found no connection with lung-cancer rates. Six suggested that people exposed to secondhand smoke had *lower* rates of lung cancer, although no one suggests passive smoking really reduces the risk.

Seven of the 26 positive studies included enough subjects, and found a sufficient effect, to attain "statistical significance"—meaning there was no more than a 5 percent probability that the results in those studies occurred by chance. In contrast, just one of the negative studies reached statistical significance.

Strength in numbers

The nonsignificant studies can still be valuable when combined with all the rest for analysis. This technique, called meta-analysis, is commonly used with carefully designed clinical trials of drugs. But its use in epidemiology is controversial, since no two studies have identical designs and the analysts must make certain assumptions as they combine data. So, the result of a meta-analysis is supporting evidence but is not definitive by itself.

Six different meta-analyses have been carried out on the secondhand-smoke studies. Every one of them yielded a statistically significant increase in lung-cancer risk of approximately 20 to 40 percent. The EPA's study is the most recent of these meta-analyses. It found an increased risk of 19 percent among U.S. nonsmokers married to smokers.

More evidence for a link between cancer and secondhand smoke comes from 19 of the studies, which grouped subjects into exposure categories. In every one of those, women exposed to the most smoke for the most years had higher cancer risks than women exposed to less smoke. That dose-response relationship—an increase in risk with an increase in exposure—is an important indication of a true cause-effect relationship.

Evidence for a dose-response relationship got important support from the most recent secondhand-smoke study, published last summer by epidemiologist Elizabeth Fontham of Louisiana State University Medical Center. The largest such study ever done, it's also considered by experts in the field to be the best in design and execution. Fontham found increased risks of lung cancer with increasing exposure to secondhand smoke, whether it took place at home, at work, or in a social setting. A spouse's smoking alone produced an overall 30 percent increase in lung-cancer risk. Women with the greatest lifetime exposure—from smoking by parents, husbands, friends, and coworkers—had a 225 percent increase in risk. (That's much less than the hazard posed by active smoking, which confers a 1100 to 2400 percent increase in lung-cancer risk.)

For any given nonsmoker, the lifetime risk of getting lung cancer remains small—4 to 5 in 1000 ordinarily, 6 to 7 in 1000 if he or she has a smoking spouse. But exposure to secondhand smoke is so commonplace that, according to the EPA's calculations, it produces an extra 3000 lung-cancer deaths among adults in the U.S. each year.

That makes secondhand smoke the third-ranking known cause of lung cancer, after active smoking and indoor radon.

Lung problems

Despite all the attention given to lung cancer, it may not be the most significant health effect of secondhand smoke. Two others stand out as well—respiratory disorders in children and heart disease in adults.

The ill effects of smoke on children begin even before birth, since many of the components of smoke reach the developing fetus through the mother. Infants born to smoking mothers weigh less and have weaker lungs than unexposed newborns. Regardless of birth weight, babies

born to smoking mothers are more likely to die in infancy than unexposed infants.

Whether from these prenatal effects or from secondhand exposure to smoke after birth, children reared around smoking parents have about twice as many respiratory infections—bronchitis and croup, for example—as the children of nonsmokers. After reviewing a number of studies, the EPA's risk analysis concluded that secondhand smoke causes an extra 150,000 to 300,000 respiratory infections a year among the nation's 5.5 million children under the age of 18 months.

Asthma, the other major childhood respiratory ailment, also turns out to be about twice as common in children exposed to high levels of secondhand smoke. Wheezing from asthma and cough from bronchial irritation occur more frequently among children of smokers. And among children with asthma, living with smoking parents markedly worsens the disease. The EPA blames secondhand smoke for causing between 8000 and 26,000 new cases of childhood asthma a year, and for aggravating the condition in about 200,000 children. "Children just should not be around people smoking," says Ross Brownson, professor of epidemiology at the St. Louis University School of Public Health.

Heart disease

The epidemiological evidence on secondhand smoke and heart disease is not as abundant as that on lung cancer, and the experts are still debating the implications. But about a dozen studies exist, and they consistently show an elevated risk. Among nonsmokers who are exposed to their spouses' smoke, the chance of death from heart disease increases by about 30 percent. (The effects of active smoking on the heart were established some years ago. Smoking about doubles a person's chance of dying from a cardiovascular condition.)

Although the heart-disease evidence isn't as strong as that for lung cancer, a number of authorities have already declared secondhand smoke a risk factor for heart disease. They include the states of California and Maryland, OSHA, the American Heart Association, and the American College of Cardiology. They point not only to the epidemiological evidence, but to animal studies, which have shown that exposure to specific elements of secondhand smoke causes blood to clot more easily and damages arterial linings—two critical steps in the development of heart disease. In addition, human studies show that the carbon monoxide in secondhand smoke decreases the supply of oxygen reaching the heart muscle, which could cause serious problems for someone with coronary heart disease.

If exposure to secondhand smoke does increase the risk of heart disease by 30 percent, then it is causing an estimated 35,000 to 40,000 heart-disease deaths a year in the U.S.—about 10 times the number of lung-cancer deaths attributed to secondhand smoke. That would make the annual toll from secondhand smoke comparable to that from motor-vehicle accidents.

The industry's campaign

The tobacco industry foresaw the health debate over secondhand smoke—and the problems it would cause for cigarette makers. In 1978, a Roper poll commissioned by the Tobacco Institute, the industry's trade group, called growing public concern about secondhand smoke "the most dangerous development yet to the viability of the tobacco industry" and recommended "developing and widely publicizing clear-cut, credible medical evidence that passive smoking is not harmful."

In 1986, Imperial Tobacco Ltd., Canada's largest cigarette company, commissioned a secret study on how to combat the growing success of antismoking activists. The study documents, made public in the course of a lawsuit, lay out in prescient detail the industry's current strategy on secondhand smoke:

"Passive smoking [should be] used as the focal point. . . . Of all the health issues surrounding smoking . . . the one which the tobacco industry has the most chance of winning [is] that the evidence proclaimed by the anti-group is flawed. . . . It is highly desirable to control the focus of the debate." The document goes on to urge "an attack on the credibility of evidence presented to date." The ideal advocate would be a medical professional, the report said, but "the challenge will be to find a sympathetic doctor who can be demonstrated to take a largely independent stance."

The recommended message on secondhand smoke: "Now that you have seen that all which has been said is not true, let's be adult and get down to the real business, a respect for each other's choices and space."

Whether or not U.S. tobacco companies ever saw the Canadian report, their current public-relations campaign is following its advice.

Influencing science

In its efforts to construct the sort of "credible medical evidence" its pollsters recommended, the tobacco industry has commissioned research from sympathetic scientists, sponsored scientific meetings carefully tailored to bring out their point of view, and published the results in the medical literature.

The research support comes through various channels: direct grants from companies or industry-funded research institutes—such as the Council for Tobacco Research and the Center for Indoor Air Research—and consulting contracts from tobacco companies, public-relations firms, and law firms. To get favorable research on the record, the industry has borrowed a technique from the pharmaceutical industry: sponsoring scientific symposia and seeing to it that their findings end up on medical library shelves.

Lisa Bero, a health policy analyst at the University of California, San Francisco, has documented the results of such symposia. She identified four symposia on passive smoking held between 1974 and 1990 that were paid for by the tobacco industry. She then compared the articles generated by the symposia with a random sample of articles on secondhand smoke that appeared in other scientific journals over the same period.

Only 4 percent of the articles from the industry-funded symposia said that passive smoking was unhealthful, compared with 65 percent of the other journal articles. Fully 72 percent of symposia reports argued that secondhand smoke wasn't harmful, compared with 20 percent of independent journal articles. (The balance of the articles were neutral.)

The symposium reports did not undergo the standard scientific process of peer review, meaning they were not scrutinized by other ex-

Campaign tactics
New York City arts groups that receive millions in grants from Philip Morris were asked by company executives to remind city lawmakers, who were considering a tough new anti-*smoking bill*, how important the grants were to the city's cultural scene.

perts in the field. Instead, they were published as non-peer-reviewed supplements to journals, or as freestanding books or monographs. Nevertheless, they can be found in the computerized databases of the medical literature. That makes them available for citation by others.

This careful construction of a citable scientific record came in handy when the tobacco industry set out to attack early drafts of the EPA's report on secondhand smoke. Bero found that two-thirds of comments critical of the report came from industry scientists, who drew heavily on industry-generated literature. The Tobacco Institute's own submission, for instance, cited 32 papers from symposia, but only seven peer-reviewed articles.

More clues Autopsies of nonsmoking wives of smokers in Greece found more pre-cancerous cells in their lungs than in wives of nonsmokers.

As the industry has learned, however, research support doesn't guarantee that a scientist will go along with the company line. At least five members of an independent scientific advisory board that reviewed the EPA report had ties to industry research groups, either as advisers or grant recipients, including a scientist awarded a $1.2-million grant from Philip Morris during the review period. Yet the board unanimously agreed that passive smoking was a cancer risk.

Public persuasion

In a public-relations campaign, scientific articles don't mean much if only scientists read them. The industry is bringing its perspective to a much wider audience, with the help of a few journalists. This became clear when we studied industry-generated material on secondhand smoke and looked over newspaper and magazine articles sympathetic to the industry's position.

To read this material is to enter a house of mirrors that endlessly reflects the same set of opinions, voiced by the same few people, again and again. A person who saw nothing else could conclude that there were only four or five scientists in all of North America qualified to speak about secondhand smoke—all of them skeptical of its danger.

You can see how this works by tracing the public utterances of one of those scientists, Gary Huber, a lung specialist at the University of Texas. Shook, Hardy & Bacon, the tobacco industry's longtime law firm, pays Huber's university to support his group's compilation of research on lung disease. Despite this, he told us, his views are his own.

In 1991, Huber wrote an article for Consumers' Research—a small-circulation magazine not connected to CONSUMER REPORTS—in which he argued that the scientific evidence on the hazards of passive smoking is "shoddy and poorly conceived." He felt the epidemiological studies were too weak and the composition of secondhand smoke too poorly understood to reach a conclusion on any risk.

In early 1993, Huber was prominently quoted in an article in Investor's Business Daily. Writer Michael Fumento stated that "many in the scientific and medical community" dispute the EPA's opinion. All five scientists quoted to back up this viewpoint have received some type of industry support.

Both Huber's and Fumento's articles became, in turn, sources for a series of opinion pieces written by another journalist, Jacob Sullum. In The Wall Street Journal and Forbes Media Critic, Sullum built on Fumento's arguments and quoted three of the same scientists, including Huber. When we asked the Tobacco Institute for material on secondhand smoke, it sent us a packet that included Fumento's article.

R.J. Reynolds reprinted Sullum's Wall Street Journal article nationwide in a full-page ad. The ad's headline: "If We Said It, You Might Not Believe It." Philip Morris went even further, buying full-page ads in major national publications for six straight days to reprint Sullum's longer Forbes Media Critic article.

The effect Huber's argument has undoubtedly now been seen by millions more people than ever read the original EPA report, never mind any of the hundreds of scientific articles on the subject in medical journals.

The industry's strategy has been effective. John Pierce, a researcher at the University of California, San Diego, who specializes in tobacco issues, checked the calls made to a statewide smokers' hotline immediately after the Reynolds and Philip Morris ads started appearing in print. Although the hotline was intended to give support to smokers who wanted to quit, the calls coming in during that period were overwhelmingly accusatory. "We had a whole heap of people calling us, asking why we were misleading them," Pierce recalls. "There are all too many people willing to believe the industry when it says this thing's not really bad for you."

Attacking the science

The heart of the cigarette makers' campaign appears to be their attack on the scientific methods used to measure the risk of secondhand smoke. In its advertising, its public statements, and its lawsuit against the EPA, the industry argues that the agency "cherry-picked" data to reach a foregone conclusion and violated the rules of statistical analysis. That's a clever strategy; it takes advantage of the public's unfamiliarity with research methods and the common perception that one week's scientific report will be debunked the following week.

To evaluate the industry arguments, we consulted CU's own professional statisticians and also turned to Charles Hennekens and Julie Buring, epidemiologists at Harvard Medical School and coauthors of a leading epidemiology textbook. They have no ties to the tobacco industry, and their own research includes studying various causes of heart disease and cancer. Here's what they said about the criticisms.

■ **Pooling studies.** The industry argues that the EPA had no business pooling smaller studies, many failing the "statistical significance" test, into one large collection of data. This is the meta-analysis technique we described above. "They've combined studies as different as night and day, which is not an accepted way to do a meta-analysis," says Walker Merryman, vice president of the Tobacco Institute.

In truth, the EPA made an effort to compare comparable studies. It sorted them by country or region, excluded the poorest-quality studies, and then pooled data only within each geographical group. The pooled results for Greece, Hong Kong, Japan, and the U.S. all showed statistically significant risk increases. The pooled results from Western Europe and China, though positive, didn't reach significance.

"Having a number of studies that show similar results but are not large enough individually to be statistically

significant on their own is exactly the situation where meta-analysis is appropriate," Buring says.

■ **The significance level.** When they analyze their data, most researchers try to set their "statistical significance" hurdle at 5 percent. In everyday language, that means there is less than a 5 percent probability the results occurred by happenstance.

However, the tobacco industry argues that the EPA lowered its hurdle to 10 percent when it pooled the various studies. Jacob Sullum said it "in effect doubles the odds of being wrong." An industry scientific consultant called it a "confidence game."

But here too, the EPA played fair. It did set a 5 percent significance level. The agency used a standard statistical technique, called a one-tailed test, that allowed a 5 percent chance of wrongly concluding that secondhand smoke increases the risk of cancer. This technique, taught in every introductory statistics course, is appropriate when, as in this case, there is already independent evidence that a substance is harmful.

What's more, when Hennekens and Buring analyzed pooled data from the 11 U.S. studies on which the EPA relied most heavily, they found that the data do meet the even tougher standard the critics are demanding.

■ **Confounding factors.** Since epidemiologists can't control everything that happens in the lives of their subjects, they have to be wary of confounding factors, possible alternative causes for the results. Relatively small risks, like that from secondhand smoke, are especially vulnerable to confounding.

The tobacco industry and its defenders have raised just such a possibility. "There are numerous, and in many cases unaccounted for, factors which makes the whole process exceedingly difficult," Merryman says. "Since we're dealing with an issue of such magnitude, I think it's proper to insist they be accounted

READING BETWEEN THE LINES

HOW TO COUNT CIGARETTES

A persuasive newspaper ad that R.J. Reynolds published last spring offered to shed light on the secondhand smoke issue by considering how many "cigarette equivalents" nonsmokers are exposed to when they live or work with smokers. For instance, it said, a nonsmoker working among smoking colleagues inhales the equivalent of just 1¼ cigarettes a month. A waiter working full-time in a restaurant breathes just 2 cigarettes' worth. A reasonable person might wonder how that could be harmful.

It might not be harmful, if it were the whole story. The numbers look benign because the cigarette company counted only a part of the smoke that doesn't harm nonsmokers. Here's the trick:

Secondhand smoke is different from inhaled smoke. It consists mostly of the "sidestream" smoke that curls from the smoldering end of the cigarette when the smoker isn't inhaling. Sidestream smoke contains higher concentrations of certain toxic substances, including several cancer-causing ones, than mainstream smoke.

The RJR ad focused on nicotine in the smoke. Good choice. Nicotine is addictive to active smokers, but it's not a carcinogen. What's more, it happens to be found in about the same concentrations in mainstream and sidestream smoke. A nonsmoker can breathe diluted, secondhand nicotine all month and, as the ad pointed out, only get a couple of cigarettes' worth.

In the fine print, the ad revealed that "use of other compounds may give different results." What if RJR had instead counted "cigarette equivalents" using the more carcinogenic components of sidestream smoke? Katharine Hammond, an environmental health expert at the University of California, Berkeley, did just that. In testimony she submitted to the U.S. Occupational Safety and Health Administration, she considered the hypothetical nonsmoking office worker in the ad and added up a month's exposure.

She found that: "In that same room, at that same time, the nonsmoker is getting as much benzene [a known human carcinogen] as a smoker gets in smoking six cigarettes; as much 4ABP, a known human carcinogen, as if smoking 17 cigarettes; and as much NDMA, the potent animal carcinogen, as one who smoked 75 cigarettes."

Hammond told OSHA, "R.J. Reynolds is using the complex chemistry of tobacco smoke to obscure the truth."

"We're not trying to hoodwink people. The main thing is that the concentrations are very very small," an RJR scientist told us.

A Tobacco Institute official told us it's wrong to assume that nonsmokers are breathing the same mix of compounds as that measured in laboratory studies of sidestream smoke. However, there is evidence that nonsmokers are taking in harmful smoke constituents. A New York research team reported in 1993 that it had measured the metabolic products of a tobacco carcinogen, NNK, in the urine of nonsmokers exposed to the conditions of a very smoky bar. The measurements were 10 times as high as those taken before the volunteers were exposed to smoke.

SIDESTREAM SMOKE DIFFERS

"Sidestream" smoke, which curls off the end of a smoldering cigarette, is the main component of secondhand smoke and is different in composition from the "mainstream" smoke that smokers inhale. Sidestream smoke contains higher concentrations of several known or probable human carcinogens. Among them:

Component	How much more is in sidestream smoke
Polonium-210	1 to 4 times
Benzo[a]pyrene	2.5 to 3.5 times
Hydrazine	3 times
1,3-butadiene	3 to 6 times
Benzene	5 to 10 times
N-nitrosopyrrolidine	6 to 30 times
Cadmium	7.2 times
Nickel	13 to 30 times
N-nitrosodimenthylamine	20 to 100 times
Aniline	30 times
2-Naphthylamine	30 times
4-Aminobiphenyl	31 times
N-nitrodiethylamine	up to 40 times

Source: U.S. Occupational Safety and Health Administration

for." The critics have usually focused on diet or socioeconomic status, both of which have been linked to the incidence of cancer. If people exposed to secondhand smoke were more likely to be poor or to have poor diets, data could be muddied.

In fact, the EPA considered possible confounding factors. Five of the studies it analyzed included information on diet. None of those five studies suggested that diet could account for the increased risk in people exposed to secondhand smoke.

The studies the EPA relied on didn't record socioeconomic status, but Fontham's newer study did—and found no link to risk. She also looked at diet and found that a diet high in fruits and vegetables did seem to protect people from lung cancer. But even after accounting for that, there was still a significant relationship between secondhand smoke and lung cancer.

Epidemiologists readily concede they can never account for all the factors that affect health. But since studies done in many countries with different cultures and habits all point to an elevated risk, confounding factors are not likely to be the explanation.

☐ **The 'excluded' studies.** The industry has repeatedly implied that the EPA ignored two 1992 studies because they didn't support the agency's conclusions. In fact, both studies were published during the seven-month period after the EPA report was written but before the agency released it. And neither study suggests the EPA is wrong.

In one, University of South Florida researcher Heather Stockwell found that nonsmoking women married to smokers had a 60 percent higher risk of lung cancer than women married to nonsmokers. The most highly exposed group—women exposed for 40 years or more—had a 130 percent increase in risk. In the other study, Ross Brownson, then of the Missouri Department of Health, found no risk increase for all exposed women as a group—but the most highly exposed had a 30 percent increase.

Both the EPA and the industry have calculated, but not published, re-analyses that include all the new studies. The EPA says it still finds a statistically significant risk; R.J. Reynolds says it doesn't.

The bottom line

There's no question that all epidemiological studies have a built-in imprecision, Buring told us. "But when you see different investigators, using different definitions and study designs, all showing similar results, then you have to believe there's something going on."

The case against secondhand smoke has reached that point. Short of conducting an impossible experiment—deliberately exposing thousands of people to secondhand smoke for decades, to see what happens—this is about as good as the human evidence on secondhand smoke is likely to get.

When those results are combined with the laboratory studies, the abundant evidence that firsthand smoke causes cancer, and the evidence for a dose-response relationship, the health implications are clear—and the EPA's conclusion inescapable.

"If we didn't have the tobacco companies spending millions of dollars to confuse the facts, this issue would be an open-and-shut case," says Stanton Glantz, a longtime tobacco researcher at the University of California, San Francisco. "The fact is that passive smoking causes lung cancer."

Your personal risk? Since the amount of smoke inhaled appears related to the risk of disease, there probably is a minimal hazard from brief exposure. But steady doses of secondhand smoke at home or on the job aren't so benign.

A nonsmoker's individual risk of dying from lung cancer, normally small, is increased slightly by living or working for years among people who smoke heavily. And although the individual risk is relatively small, the numbers add up to an issue of public health. Thousands of people in the U.S. may be dying or made sick every year from other people's smoking.

James Repace and Alfred Lowrey, two statistical researchers who study the effects of secondhand smoke,

QUITTING SMOKING

IF AT FIRST YOU DON'T SUCCEED

As any heavy smoker who's tried to quit knows all too well, nicotine dependence is one of the toughest addictions to shake. Little wonder, since every puff provides not only a psychological reinforcement of the habit but also a satisfying micro-dose of nicotine.

Nevertheless, about half of all Americans alive today who ever smoked have managed to quit—and the overwhelming majority of those who still smoke want to do likewise. Here's what we know about the best ways to stop smoking:

■ **Keep trying.** Most smokers try to quit—and fail—several times before succeeding. There's some evidence that the more times a smoker has tried and failed to quit, the better the chance of success the next time.

■ **Go cold turkey.** Most ex-smokers did it that way. Cutting back gradually doesn't seem to work as well, probably because it continues to reinforce the habit. There's also evidence that addicted smokers who try to cut back end up inhaling more of the cigarettes they do smoke in order to keep their nicotine levels up.

■ **Get support.** Especially for the most highly addicted smokers, support programs can make a crucial difference. These group programs generally feature a combination of lectures, behavioral management techniques, and peer support. Low-cost or free programs are offered by many hospitals as well as local chapters of the American Lung Association (call 800 586-4872 for information) and the American Cancer Society (800 227-2345).

Support at home is important, too. Nonsmokers: Tell your smoking friends and relatives how happy and proud you'd be if they tried to quit. If they make the effort, support it with praise, small favors, and help with concrete strategies like exercising and staying away from smoke-filled rooms. If they fail, encourage them to try again later.

■ **Consider the patch.** On the market for more than three years, the nicotine replacement patches, although not a magical solution, have proven to be a helpful adjunct to other treatment methods for smokers who can't seem to quit on their own. The skin patches provide a steady stream of nicotine that takes the edge off the craving for cigarettes. One warning: There have been a few reports of heart attacks among people who continued to smoke while wearing the patches.

have concluded that a lifetime increase in lung-cancer risk of 1 in 1000 could be caused by long-term occupational exposure to air containing more than 6.8 micrograms of nicotine per cubic meter of air. (The nicotine itself doesn't cause lung disease but is a marker for smoke concentration.) Concentrations that heavy occur regularly in many homes and workplaces.

For its study, the EPA found 19 reports of measurements of nicotine levels in enclosed spaces where people smoked. Nicotine levels in homes of smokers had averages that ranged, from study to study, between 2 and about 11 micrograms; in offices, the range of averages was about 1 to 13. Restaurants were even smokier, with averages between about 6 and 18 micrograms.

What should be done

If secondhand tobacco smoke were not connected to the profits of a powerful industry, we doubt there would be much argument about drastically restricting people's exposure to it.

The lifetime added risk of developing lung cancer from prolonged exposure to secondhand smoke is roughly 1 in 1000—1000 times greater than the one-in-a-million lifetime cancer risk considered unacceptable for many other environmental contaminants. Even in small doses, it can be an uncomfortable irritant, at the very least.

In response to the data, the tobacco industry has accelerated its campaign against public smoking restrictions. For instance, five companies together laid out nearly $8-million last year in an unsuccessful effort to persuade California voters to approve a smoking-control law that would have invalidated stronger state and local restrictions.

The 1994 elections greatly improved the industry's legislative prospects. Out as chairman of the House Subcommittee on Health and Environment is Democrat Henry Waxman of California. His hearings last year produced the widely seen image of tobacco-company chiefs swearing they didn't think cigarettes were addictive. His likely replacement is Republican Thomas Bliley. The major employer in Bliley's Virginia district is Philip Morris, and Bliley has already said, "I don't think we need any more legislation concerning tobacco."

We disagree. We believe nonsmokers have a right to breathe smoke-free air, and we have long favored restrictions on where people may smoke. The medical evidence makes it imperative to impose such limits. In particular, we support measures to keep smoke out of the workplace—not just offices and factories but also restaurants, stores, and public transportation, because of the risk to the millions of Americans who work there, too.

We support OSHA's efforts to limit workplace smoking to certain ventilated rooms. OSHA calculates that over the next 45 years a workplace smoking ban would eliminate between 5500 and 32,500 lung-cancer deaths and 98,000 to 578,000 deaths from heart disease. (The variation comes from uncertainty about current levels of exposure to secondhand smoke.)

That makes control of smoke one of the great public-health bargains. Getting rid of workplace smoke requires posting signs, putting a few chairs and an ashtray outdoors, or putting an appropriate ventilation fan into a special smoking room—an improvement that OSHA estimates would cost $4000 per building. In contrast, the bill for removing asbestos from a commercial building averages $300,000.

Stopping, and starting

Though the intended beneficiaries of smoking restrictions are nonsmokers, smokers may benefit, as well. That's because, as many studies have now confirmed, the imposition of smoking restrictions is enough to motivate some smokers to quit.

Those who smoke at home, we think, should make heroic efforts to quit for the sake of their families, if not themselves. (For advice on quitting, see the facing page.)

The declining rates of smoking in the U.S. show that people can quit. But unfortunately, one group of smokers has stopped shrinking. Teen-age smoking rates, after years of decline, seem to have leveled off and may even have begun growing again, especially among girls. This phenomenon, and the ways cigarette makers' messages are delivered to teens, will be the focus of our next report on smoking. ■

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STATE OF WEST VIRGINIA

REGIONAL JAIL and CORRECTIONAL FACILITY AUTHORITY

CAPITOL COMPLEX
307 JEFFERSON STREET
P. O. BOX 50285
CHARLESTON, WV 25305-0285
(304) 558-2110
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GASTON CAPERTON
Governor

JACK J. ROOP
Executive Director

July 14, 1995

Mr. Nicholas J. Hun, Commissioner
West Virginia Division of Corrections
112 California Avenue
Charleston, West Virginia 25305

Dear Commissioner Hun:

Thank you for your letter of July 7, 1995 expressing your official written comment upon the proposed amendment of §13.1 of 95CSR2, the Minimum Standards for Construction, Operation and Maintenance of Correctional Facilities.

You may rest assured that your comments, along with any others received, will be presented to the Jail and Correctional Facility Standards Commission when they next meet on July 31, 1995 to review the comments received during the period of public comment.

You may feel free to attend the Standards Commission's meeting on July 31, 1995 at 9:00 a. m. if you desire.

Very truly yours,

Frank G. Shumaker
Deputy Director

CC: Vernon Barley, Chairman
Jail and Correctional Facility Standards Commission

West Virginia Division of Corrections

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF CORRECTIONS
NICHOLAS J. HUN, COMMISSIONER

GASTON CAPERTON
GOVERNOR

MAJOR GENERAL JOSEPH J. SKAFF
SECRETARY

OFFICE OF THE COMMISSIONER
112 CALIFORNIA AVE.
STATE CAPITOL COMPLEX
CHARLESTON, WV 25305-0280
(304) 558-2036

July 7, 1995

Mr. Frank Shumaker
Regional Jail & Correctional Facility Authority
307 Jefferson Street
Charleston, West Virginia 25305

Dear Mr. Shumaker:

This correspondence is submitted as an official written comment to a proposed amendment to the existing rule, series number 95CSR2, entitled Minimum Standards for Construction, Operation and Maintenance of Correctional Facilities, as filed with the Office of the Secretary of State on June 30, 1995.

In addition to general language clean-up, which is welcomed, there is one substantive change to the existing rule. Section 13.1, which generally deals with sanitation, contains the following proposed addition:

> The use and possession of tobacco, tobacco products and tobacco-like products shall be prohibited in all facilities jointly operated by the Regional Jail and Correctional Facility Authority and the Division of Corrections, and may be permitted in designated areas of correctional facilities operated exclusively by the Division of Corrections at the discretion of the Chief Administrator.

The West Virginia Division of Corrections objects in the very strongest manner to the adoption of this language. This proposed standard is contrary to Corrections' philosophy and, unfortunately was composed without regard to, or consultation with, Division of Corrections' policies and administrators.

This proposed rule would impact on one institution only, Northern, as it is the only facility operated by both Corrections and the Authority at this time. The Corrections' position at Northern, as with all of the Division's facilities, very clearly restricts tobacco possession and use and has for sometime specified designated smoking areas.

Corrections' position is that prohibition of any tobacco use for persons serving sentences of many years, up to and including life, is an arbitrary and capricious exercise of administrative authority which serves no reasonable management purpose. Sanitation issues are already handled by operational regulations and health concerns are best dealt with through education, not this ill-conceived approach.

I strongly recommend that this proposed addition to the State Standards be withdrawn in its entirety. If it is felt by the Standards Commission that this issue should be addressed at all, it is recommended that it take the following form:

> The use and possession of tobacco, tobacco products and tobacco-like products in all facilities operated exclusively by the Division of Corrections, and in those portions of institutions under the direct management of Corrections in jointly operated facilities, may be permitted in designated areas at the discretion of the Chief Administrator.

Your attention and cooperation, as well as that of the Standards Commission, is most sincerely sought in this matter.

Sincerely,

Nicholas J. Hun
Commissioner

NJH:WRW:bjh

cc: General Skaff
Jack Roop
File: WRW95.114