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## **Legal Aspects of Jail and Prison Fires**

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### **A - Introduction**

Fire safety has been addressed by state and federal courts in a variety of legal settings:

1. Federal courts have oversight authority in “conditions of confinement” litigation, including the power to order injunctive relief. The Eighth Amendment protects only convicted inmates. Inmates awaiting trial seek judicial protection under the Fourteenth Amendment. (1)
2. State courts have the power to award damages for inmate injuries and deaths arising from managerial negligence; federal courts can address negligence claims under “pendent” jurisdiction complaints. (2)
3. Employee injuries caused by fires can form the basis of workers’ compensation claims and disability retirement petitions.

4. State and local fire marshals and other regulatory officers can initiate a civil action to abate a dangerous nuisance or to require compliance with fire and building codes. (3) See section D, below.

## **B – Federal inmate litigation**

The Third Circuit affirmed a district court order that addressed various confinement issues, including fire safety. [Tillery v. Owens](#), #89-3689, 907 F.2d 418 (3rd Cir. 1990).

The panel wrote:

“Fire safety in North and South Blocks is poor. Although there are fire extinguishers sufficient to battle small fires, there is no equipment for detecting or fighting major conflagrations. The smoke exhaust fans in use do not adequately protect from smoke inhalation.

“The lack of fire safety equipment is exacerbated by the high concentration of combustible materials in storage areas and in the housing units. In the cells, mattresses, stored personal belongings, and items hanging from the ceilings allow for the rapid spread of fire. One expert testified that South Block has “the highest degree of ‘combustible loading’” he had seen during his studies of over 80 prisons. *Id.* at 1278.

“If a fire were to occur, evacuation would be difficult. Because there is no master system for unlocking cells, each cell would have to be individually unlocked, a process that would take at least 12 minutes in ideal conditions. It would take at least an additional three minutes for inmates to exit one of the two doors on the block. However, the block could be entirely filled with smoke within only two or three minutes.

“Furthermore, it is likely that the evacuation would be chaotic and dangerous. The district court heard testimony that during an evacuation in a 1987 fire, officers left the building as soon as the cells were unlocked, and unsupervised inmates blocked the exits and committed assaults. An expert witness concluded that the poor level of fire protection made it likely that numerous inmates would die if a serious fire broke out.”

The panel concluded that “on this record and its findings of fact, the district court concluded that [the facility] was unconstitutionally overcrowded and that ... fire safety ... fell below constitutional requirements.”

- The D.C. Circuit has held that if overcrowding leads to rioting by jail inmates and a fire is an integral part of that riot, the overcrowding could be the proximate cause of the fire, and could lead to liability. Marsh v. Barry, # 86-5388, 263 U.S. App. D.C. 159, 824 F.2d 1139 (1987).

## **C – State inmate litigation**

Inmates in a North Carolina state prison facility, in furtherance of an escape attempt, set fire to several mattresses piled on a table in a dormitory. A state agency found negligence on the part of a lieutenant and a sergeant. An appellate court reversed those findings.

Although the mattresses were highly flammable, to charge the institute with the “duty of foreseeing that the use of polyurethane mattresses would result in a conflagration such as happened here is requiring more of him than the law does or should require.”

The appellate panel wrote that it was convinced that the placing of inmates with polyurethane mattresses on the bunks was not an act from which officials could have and should have foreseen that the inmates would pile mattresses on and around a table and then provide the combustion which would cause them to burn rapidly. They added:

“We fail to see negligent action on the part of Lt. W\_ and Sgt. M\_, or either of them. It is quite clear that they were aware of the purpose of the fire. . . .

“It is obvious to us, from ... the Record ... that had the two men gone into that dormitory, the inmates would have overpowered them and taken them hostage, injured, or killed them and that the same treatment would have then been accorded Guards B\_ and B\_ as the inmates made their way out of the prison and back into society again to prey upon the general public, committing other crimes of violence as they went.”

Watson v. N.C. Dept. of Correction, #791-0IC-188, 47 N.C. App. 718, 268 S.E.2d 546 (1980).

More recently, the North Carolina Supreme Court reinstated a civil action alleging negligence on the part of state officials. [Multiple Claimants v. N.C. Division of Facility Services, Jails and Detention Services](#), #183A06, 361 N.C. 372, 646 S.E.2d 356 (2007).

The issue was whether there was a “special relationship” with the inmates. The plaintiffs claimed that a special relationship existed between the state and the injured and deceased inmates because they “were confined and unable to protect themselves.” The majority wrote:

“The special relationship exception also applies to the facts of the instant case because of the relationship between the State and inmates by reason of the inmates’ inability to care for themselves. Inmates in custody necessarily have limited freedom to provide for themselves or to protect themselves from external dangers such as fire. They cannot ensure that the facility in which they are confined contains functional safety devices and procedures to deal with an emergency.”

The Chief Justice dissented, believing that the legislature did not intend to make the State a guarantor of the safety of a confinement facility.

- In Alaska, the state Supreme Court came to a similar conclusion many years ago. A jailer owes a duty to the prisoner to exercise reasonable care for the protection of his life and health, comparable to that owed by a common carrier to its passengers, because prisoners, like passengers, are confined and cannot avail themselves of normal opportunities for self-protection. [Wilson v. City of Kotzebue](#), #4256, 627 P.2d 623 (Alaska 1981).

## **D - State regulatory litigation**

An example of this action occurred in York County, Pennsylvania. The state’s Industrial Board of the Department of Labor and Industry required the county to vacate its prison for violation of the Fire and Panic Act and related regulations and for a failure to comply with various orders.

Lacking an electronic smoke detection system, the county sought to avoid compliance by hiring fire watchers. An appellate court rejected that solution, writing:

“The record is devoid of evidence relative to the proven effectiveness of fire watchers or expert testimony to demonstrate that fire watchers roving the prison around the clock are an adequate substitute for modern technological devices.”

The appellate panel affirmed the order to close the facility. [County of York v. Comm. of Pennsylvania Industrial Board](#), #2478 C.D. 1977, 43 Pa. Commw. 124, 401 A.2d 885 (1979).

## **E - Fire safety**

The following “Fire Safety Recommendations” were published in a corrections periodical in 1995. The author, a Maryland judge, was counsel for the state’s Dept. of Correctional Services for two decades:

1. Every facility should have a fire safety inspection at least quarterly. Inspection reports should be kept on file. If local codes require more frequent inspections, they should be done.
2. Facility management should not hesitate to ask local fire officials to inspect. If deficiencies are found, a plan of correction should be developed and implemented.
3. Fire retardant materials should be used in all bedding and wherever else possible.
4. Fire alarms and smoke detectors should be installed and tested weekly and a log kept.
5. There should be a fire evacuation plan, which should be reviewed and updated annually. There should be some drill or simulation to make sure all personnel know their roles and responsibilities.
6. Fire extinguishers, standpipes, etc. should be checked and maintained in accordance with manufacturer or fire personnel recommendations.

7. The fire alarm system should be connected to the nearest fire department or emergency dispatch facility.
8. Where possible, sprinkler systems should be retrofitted to existing construction and included in any new construction.
9. The volume of property prisoners have in their cells, rooms, etc. should be carefully monitored to make sure that the amount does not negatively affect fire safety. Local fire officials can assist in setting “property loads” for purposes of fire safety.
10. Prisoners should not be allowed to hang flammable materials in the fronts of cells for privacy purposes unless approved by fire authorities.
11. At the discretion of the facility, smoking by prisoners and staff may be limited or restricted to certain areas. There is no constitutional right to smoke.

Source: “Fire Safety Recommendations,” in *Overcrowding and Conditions of Confinement Litigation*, by Judge Emory A. Plitt Jr., 95 (1) *Corrections Legal Defense Quarterly* 12-13 (1995).

- Another serious problem is the absence or unavailability of duplicate keys. Electromechanical doors may not operate during a fire. Duplicate keys to manually unlock cell doors and escape passageways may not be available, due to the location of the fire and the duplicate key box or vault. Key redundancy can save lives.



## **F – Notes**

1. [Farmer v. Brennan](#), # 92-7247, 511 U.S. 825 (1994). A prison official may be held liable under the Eighth Amendment for acting with “deliberate indifference” to inmate health or safety only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.
2. [28 U.S. Code §1367](#); [United Mine Workers v. Gibbs](#), 383 U.S. 715 (1966).
3. See, for example, [Michigan Fire Prevention Code §29.23](#) (1941): “If the state fire marshal determines that a fire hazard is imminently dangerous or menacing to human life and the public safety requires its immediate abatement, removal, correction, or discontinuance, the state fire marshal may bring, or cause to be brought, in the circuit court of the county in which the fire hazard is located, an action to abate, remove, correct, or discontinue the fire hazard.”

## **G - References** (*chronological*)

### ***Articles and bulletins***

1976: The Seminole County Jail Fire, 70 (1) NFPA Fire Journal (Jan.); NCJ #61306.

1978: Fire in Prisons, 72 (2) NFPA Fire Journal 29-42 (Mar.); NCJ #061303.

1982: Fire Safety in Jails - Planning for Emergencies. N. E. Schafer, 46 (3) Federal Probation 41-45 (Sep. 1982); NCJ #85712.

1993: Jail Fire Safety. [Nebraska Jail Standards Board Bulletin 101](#) (Sep.).

1995: *Fire Safety Recommendations*, in Overcrowding and Conditions of Confinement Litigation. Judge Emory A. Plitt Jr., 95 (1) Corrections Legal Defense Quarterly 12-13.

### ***Notable U.S. jail and prison fires***

1910: New Haven County Jail, Conn. - 6 firefighters died;

1916: El Paso City Jail, Tex. - 22 inmates died;

1930: Ohio State Penitentiary (Columbus) - 322 inmates died;

1967: State Prison Camp, Jay, Fla. - 37 inmates died;

1975: Seminole County Jail, Fla. - 1 officer, 10 inmates died;

1977: Maury County Jail, Tenn. - 42 died;  
1977: Federal Corr. Institution, Danbury, Conn. - 5 inmates died;  
1982: Harrison County Jail, Miss. - 29 inmates died;  
2002: Mitchell County Jail, N.C. - 8 inmates died.

**Training videos:**

1984: Fire in the Jail, MTI Corp. (VHS)  
1990: Fire Safety, 1 (3) AJA Jail Operation Bulletins, American Jail Assn. (VHS)

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