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Support of Inmates

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Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Support of Inmates

Reference Number: CTAS-1367

"[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200, 109 S.Ct. 998, 1005-1006, 103 L.Ed.2d 249 (1989).

The Eighth Amendment to the Constitution of the United States, reinforced by the Fourteenth Amendment, prohibits the imposition of cruel and unusual punishment. It is much too late in the day for states and prison authorities to think that they may withhold from prisoners the basic necessities of life, which include reasonably adequate food, clothing, shelter, sanitation, and necessary medical attention.

It should not need repeating that compliance with constitutional standards may not be frustrated by legislative inaction or failure to provide the necessary funds.

On the other hand, lawful incarceration necessitates withdrawal of or limitations upon many individual privileges and rights. A prisoner does not retain constitutional rights that are inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Wide ranging deference must be accorded the decisions of prison administrators. They, and not the courts, must be permitted to make difficult judgments concerning prison operations.

If the State furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under Amendment Eight.

Newman v. State of Alabama, 559 F.2d 283, 286, 291 (5th Cir. 1977) (citation omitted).

Every person committed to jail may furnish their own support under such precautions as the jailer may deem proper to adopt for the purpose of guarding against escapes and to prevent the importation of intoxicants or narcotics. If support is not furnished by the prisoner, it must be furnished by the jailer. T.C.A. § 41-4-108.

In 1978, the attorney general opined that "a sheriff does not have the authority to absolutely ban the importation of any food into the jail by prisoners, but may set up reasonable rules regarding such importation."

It would not be unreasonable, therefore, for a sheriff to regulate the importation of food if he does so for the purpose of preventing escapes or the importation of contraband. The dangers are obvious.

Case law directly on point is nonexistent. There is, however, much authority for the proposition that the courts will not interfere with the right of prison officials to enforce reasonable regulations to maintain discipline and security within prisons.

Op. Tenn. Atty. Gen. No. 78-55 (January 31, 1978).

However, in 1979, the United States Supreme Court ruled that the prohibition against pretrial detainees' receipt of packages of food and personal items from outside a federal correctional facility did not violate the Fifth Amendment, especially in view of obvious fact that such packages were handy devices for smuggling of contraband. *Bell v. Wolfish*, 441 U.S. 542, 554-555, 99 S.Ct. 1875, 1882, 60 L.Ed.2d 447 (1979).

Prison officials must be allowed to take reasonable precautions to guard against the smuggling of weapons, drugs or other contraband, the presence of which could pose a serious threat to the safety of corrections personnel and other inmates, or indeed, to the institution itself. Thus, in *Bell v. Wolfish*, 441 U.S. 542, 558-59, 99 S.Ct. 1875, 1884-85 (1979), the Supreme Court held that requiring inmates to submit to so serious an intrusion as body-cavity searches after every contact visit with a person outside the institution did not violate the Fourth Amendment.

Smith v. Fairman, 678 F.2d 52, 54 (7th Cir. 1982).

Provisions shall be made so that inmates can regularly obtain the following minimum hygiene items:

- (a) Soap;
- (b) Toothbrush;
- (c) Toothpaste or toothpowder;
- (d) Comb;
- (e) Toilet paper;

- (f) Hygiene materials for women; and,
- (g) Shaving equipment.
- (h) These items or services shall be made available at the inmate's expense unless the inmate cannot afford to pay, in which case the inmate shall be provided the item or services free of charge. Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(3).

Inmates shall be allowed freedom in personal grooming except when a valid governmental interest justifies otherwise. Arrangements for haircuts shall be made available, at the inmate's expense, on a regular basis. If an inmate cannot afford this service, it shall be provided free of charge. Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(5).

Non-smoking inmates shall not be exposed to second-hand smoke. Rules of the Tennessee Corrections Institute, Rule 1400-1-.16(7).

Food and Bedding

Reference Number: CTAS-1368

Pursuant to T.C.A. § 41-4-109, the jailer must furnish adequate food and bedding for the inmates. See Rules of the Tennessee Corrections Institute, Rule 1400-1-.10 and .15. See also *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1247 (6th Cir. 1989) (Tennessee law provides that the sheriff has a duty to provide adequate food and bedding, maintain cleanliness and provide toiletries and showers.); *State v. Trotter*, 218 S.W. 230 (Tenn. 1920) (It is the duty of the sheriff to see that prisoners in a county jail are supplied with wholesome drinking water, but he need not furnish such water at his own expense.); *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122 (M.D. Tenn. 1982) (The Eighth Amendment clearly requires states to furnish its inmates with reasonably adequate food.). Each inmate who is detained overnight shall be provided with the following standard issue:

- One clean fire-retardant mattress in good repair;
- One clean mattress cover;
- If pillows are provided, they shall be fire-retardant and a clean pillowcase shall be provided;
- Sufficient clean blankets to provide comfort under existing temperature conditions; and,
- One clean bath-size towel. Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(6).
- Further, the Rules of the Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(7). requires that facilities maintain an adequate supply of bedding and towels so that the following laundry or cleaning frequencies may be adhered to: (a) Sheets, pillowcase, mattress covers, and towels shall be changed and washed at least once a week; (b) All mattresses shall be disinfected quarterly and documented; and, (c) Blankets shall be laundered monthly and sterilized before re-issue.

The failure to properly prepare and serve nutritionally adequate food to inmates who are unable, due to their confinement, to seek alternative sources of nutrition can constitute a violation of the inmates' Eighth and Fourteenth Amendment rights. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980). See also *Trotter v. Engelsingjerd*, 2004 WL 2567632, *3 (E.D. Mich. 2004) ("The Supreme Court has held that the Eighth Amendment imposes upon prison officials the duty to 'provide humane conditions of confinement,' and that among the obligations attendant to the discharge of that duty is to 'ensure that inmates receive adequate food, clothing, shelter, and medical care.'") citing *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); *Aldridge v. 4 John Does*, 2005 WL 2428761 (W.D. Ky. 2005).

The Eighth Amendment to the Constitution requires only that states provide an inmate with "nutritionally adequate food." *State v. York*, 701 N.E.2d 463, 469 (Ohio App. 1997) citing *Ramos v. Lamm*, 639 F.2d 559, 570-571 (10th Cir. 1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981); *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977), rev'd in part on other grounds, *Alabama v. Pugh*, 438 U.S. 781, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1978) ("If the State furnishes its prisoners with reasonably adequate food, ... that ends its obligations under Amendment Eight."). "A well-balanced meal, containing sufficient nutritional value to preserve health, is all that is required." *Smith v. Sullivan*, 553 F.2d 373, 380 (5th Cir. 1977). "The Eighth Amendment does not require prisons to provide prisoners with more salubrious air, healthier food, or cleaner water than are enjoyed by substantial numbers of free Americans." *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001) (citations omitted).

Food Service Operations

Food service guidelines and a menu pattern approved by a dietician, at least annually, shall be used by each facility in the preparation of meals. Menu evaluations shall be conducted, at least quarterly, by food service supervisory staff to verify adherence to the established basic dietary servings. Working inmates

shall receive at least three meals every twenty-four hours with no more than fourteen hours between any two meals. At least two of these meals shall be hot. Non-working inmates shall receive at least two meals every twenty-four hours with no more than fourteen hours between any two meals. Variations may be allowed based on weekend and holiday food service demands, as long as basic nutritional goals are met. All meals shall be prepared (except when catered) and served under the direct supervision of staff. Written policy and procedure shall require that accurate records are maintained on the number of meals served per day, the actual food served, and meal schedule. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(2), (3), (4), and (6).

Inmates involved in the preparation of the food shall receive an agency-approved pre-assignment medical screening to ensure freedom from illness transmittable by food or utensils. Facilities shall have a policy to insure those currently assigned to food service preparation duties that are identified by food service staff as having an illness or infection shall be removed from those duties. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(5).

Facilities shall inspect all food service areas on a weekly basis, including dining and food preparation areas and equipment by administrative, medical, or food service personnel. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(7).

Written policy shall require that food shall never be used as a reward or disciplinary measure. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(7).

Modified diets shall be prepared for inmates when requested by medical staff or by a physician's order and all reasonable efforts shall be made to accommodate dietary needs of a religion. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(9).

Shelf goods shall be maintained between forty-five degrees and eighty degrees Fahrenheit; refrigerated goods between thirty-five degrees and forty degrees Fahrenheit; and frozen foods at zero degrees Fahrenheit or below. Refrigerators shall be clean and contain a thermometer. All food products shall be stored at least six to eight inches off the floor on shelves or in shatter-proof containers with tight fitting lids. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(10), (12), and (13)

The preparation or storage of open food, other than a reasonable amount of commissary food, shall not be permissible in the immediate housing area. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(11)

Insecticide, cleaning agents and poisonous substances shall be plainly labeled and stored away from food. Culinary equipment (knives and other sharp instruments) shall be securely stored, inventoried and their use controlled. Stoves shall be equipped with operable hooded exhaust systems and the filters shall be kept clean. Rules of the Tennessee Corrections Institute, Rule 1400-1-.10(14), (15), and (16)

Cleanliness

Reference Number: CTAS-1369

Jailers are required by statute to enforce cleanliness in their respective jails. They are required to furnish the necessary apparatus for shaving once a week, provide bathing facilities separate for males and females, furnish hot and cold water, provide clean and sufficient bedding, and provide laundering once a week to prisoners who are not able to provide for themselves. Jailers are required to keep the jails clean, and must remove all filth from each cell once every 24 hours. T.C.A. § 41-4-111. See Rules of the Tennessee Corrections Institute, Rule 1400-1-.09 and Rule 1400-1-.15. See also *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1247 (6th Cir. 1989) (Under Tennessee law the sheriff has the responsibility of conforming to at least minimal constitutional standards in providing and maintaining adequate bedding, toiletries, and cleanliness.). Facilities shall be clean and in good repair. Floors throughout the facility shall be kept clean, dry, and free from any hazardous materials or substance. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(2)

A facility employee shall make daily sanitation and safety inspections. Dates of inspections shall be recorded and conditions noted. Any maintenance problems shall be recorded on a regular maintenance report. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(3). Additionally, facility administrators shall develop a list of articles and materials that shall be allowed in the cell area. Inmates shall be informed of this list upon admission. Rules of the Tennessee Corrections Institute, Rule 1400-1-.05(6)

It has been held that the "failure to regularly provide prisoners with clean bedding, towels, clothing and sanitary mattresses, as well as toilet articles including soap, razors, combs, toothpaste, toilet paper, access to a mirror and sanitary napkins for female prisoners constitutes a denial of personal hygiene and sanitary living conditions." *Dawson v. Kendrick*, 527 F.Supp. 1252, 1288-1289 (S.D. W.Va. 1981) (finding

conditions to be violative of the 14th Amendment as to pretrial detainees and the Eighth Amendment as to convicted prisoners) (citation omitted); *Laaman v. Helgemoe*, 437 F.Supp. 269, 310 (D. N.H. 1977) (When the deprivation of basic elements of hygiene and the presence of unsanitary conditions in the cells threaten the health of the occupants, the Constitution is violated.).

The Eighth Amendment requires states to furnish its inmates with reasonably sanitary conditions, reasonably adequate ventilation, hygienic materials, and utilities (i.e., hot and cold water, light, heat, plumbing). Inmates must be furnished with materials to keep their cells clean and for the maintenance of personal hygiene. *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122-1123 (M.D. Tenn. 1982). "Where reasonably sanitary conditions are not maintained, an Eighth Amendment violation may be sustained." *Jones v. Stine*, 843 F.Supp. 1186, 1190 (W.D. Mich. 1994) citing *Walker v. Mintzes*, 771 F.2d 920, 928 (6th Cir.1985); *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122-23 (M.D. Tenn. 1982). See *Brown v. Brown*, 46 Fed.Appx. 324 (6th Cir. 2002) (Any inconvenience that prisoner suffered due to his inability to purchase personal hygiene and toiletry items for several months because of unlawful hold on his account did not demonstrate a condition of confinement that fell beneath the minimal civilized measure of life's necessities, and therefore did not violate Eighth Amendment.); *Lunsford v. Bennett*, 17 F.3d 1574 (7th Cir. 1994) (Delay in providing inmates with requested hygiene supplies for approximately a 24- hour period found not to violate the Eighth Amendment where the record contained no evidence indicating that inmates' cells were unusually dirty or unhealthy, or that health hazards existed.); *White v. Nix*, 7 F.3d 120, 121 (8th Cir. 1993) (No Eighth Amendment violation found where inmate was housed in a screened cell for 11 days. All the cells in the cellblock were equipped with a toilet, a sink with hot and cold water, a bed and table, and each cell was wired for cable television.); *Jones v. Stine*, 843 F.Supp. 1186, 1190 (W.D. Mich. 1994) (Mere denial of cleanser and disinfectant found not to violate the Eighth Amendment where inmate had access to running water, a sponge and weekly access to a mop and duster.).

The lack of adequate ventilation and air flow can violate the minimum requirements of the Eighth Amendment if it undermines the health of inmates and the sanitation of the jail. *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) citing *Ramos v. Lamm*, 639 F.2d 559, 569 (10th Cir. 1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981). While courts have recognized that a constitutional right to adequate ventilation exists, it does not assure the right to be free from all discomfort. *Board v. Farnham*, 394 F.3d 469, 486 (7th Cir. 2005). "Inadequate ventilation, usually in combination with other factors, may give rise to an Eighth Amendment claim. However, the problem must be extreme. Conditions such as poor ventilation, or dry air, do not fall below 'the minimal civilized measure of life's necessities,' absent medical or scientific proof that such conditions exposed a prisoner to diseases or respiratory problems which he would not otherwise have suffered." *Gibson v. Ramsey*, 2004 WL 407025, *7 (N.D. Ill. 2004) (citations omitted). See *Bomer v. Lavigne*, 101 Fed.Appx. 91 (6th Cir. 2004) (Lack of power in prisoner's cell from Friday until Monday, when electrician was scheduled to perform repair, could not support civil rights claim under Eighth Amendment where, aside from a lack of ventilation, prisoner did not allege that he was harmed by the power outage.); *Ingram v. Jewell*, 94 Fed.Appx. 271 (6th Cir. 2004) (Confiscation of electrical extension cord used by state inmate to operate fan to ventilate his cell did not violate Eighth Amendment given absence of allegation that cell ventilation was so inadequate as to fall below minimal civilized measure of life's necessities.); *Shelby County Jail Inmates v. Westlake*, 798 F.2d 1085 (7th Cir. 1986) (Sufficient evidence existed to support jury finding that ventilation in county jail was adequate and did not constitute punishment of pretrial detainees or cruel and unusual punishment of convicted inmates.); *Carver v. Knox County*, 753 F.Supp. 1370 (E.D. Tenn. 1989) (County jail intake center's lack of adequate ventilation was constitutionally impermissible under either Eighth or 14th Amendments.).

Forcing a nonsmoking prisoner with a serious medical need to share a cell with a prisoner who smokes can constitute a violation of the Eighth Amendment. *Talal v. White*, 403 F.3d 423, 427 (6th Cir. 2005). "[T]he mere existence of non-smoking pods does not insulate a penal institution from Eighth Amendment liability where, as here, a prisoner alleges and demonstrates deliberate indifference to his current medical needs and future health." *Id.* See also *Wilcox v. Lewis*, 47 Fed.Appx. 714 (6th Cir. 2002) (Alleged exposure of state prisoner, who was diagnosed with cancer, to environmental tobacco smoke (ETS) did not violate his Eighth Amendment rights where there was no evidence that ETS had anything to do with his serious medical condition, prison officials were not aware that prisoner had any serious medical need for a smoke-free environment, and each cell in prison had separate intake and exhaust ventilation system and prisoners were permitted to smoke only in their cells and in prison yard.).

"Adequate lighting is one of the fundamental attributes of 'adequate shelter' required by the Eighth Amendment." *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985) (holding that the lighting at the penitentiary violated the Eighth Amendment where the evidence showed that the lighting was so poor that it was inadequate for reading and caused eyestrain and fatigue and hindered attempts to ensure that basic sanitation was maintained). It has been held that the "failure to provide security quality lighting

fixtures of sufficient illumination to permit detainees and convicted inmates to read without injury to their vision constitutes a danger to the health and security of pre-trial detainees and prisoners alike." *Dawson v. Kendrick*, 527 F.Supp. 1252, 1288 (S.D. W.Va. 1981) (citation omitted). "Inadequate lighting has been recognized in a variety of contexts as constituting cruel and unusual punishment violative of the Eighth Amendment when, in the absence of a valid governmental interest, it unnecessarily threatens the physical and mental well-being of prisoners." *Id.*

Such conditions as poor plumbing and sewage systems rise to the level of a constitutional violation where they appear "in such disrepair as to deprive inmates of basic elements of hygiene and seriously threaten their physical and mental well-being." *Jones v. City and County of San Francisco*, 976 F.Supp. 896, 910 (N.D. Cal. 1997) citing *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985). See also *Dawson v. Kendrick*, 527 F.Supp. 1252, 1288 (S.D. W.Va. 1981) (finding antiquated, neglected and unsanitary state of the plumbing and the plumbing fixtures was both punitive and violative of the 14th Amendment rights of the pretrial detainees and the Eighth Amendment rights of the convicted inmates; further finding that conditions constituted a breach of county officials statutory duties under state law to keep the jail in a "clean, sanitary and healthful condition" and in "constant and adequate repair"). But see *Benjamin v. Fraser*, 2003 WL 22038387 (2d Cir. 2003) (Although some showers at city jails provided water that was either too hot or too cold, such plumbing problems were not sufficiently pervasive to amount to violation of pretrial detainees' due process rights.).

Medical Care of Inmates

Reference Number: CTAS-1370

It is the duty of the county legislative body to provide medical attendance for all prisoners confined in the county jail. The county legislative body shall authorize the compensation of the county jail physician, as agreed upon in writing between the county and the attending jail physician, or as may be fixed by the county legislative body. T.C.A. § 41-4-115(a). The Tennessee Supreme Court has recognized that it is the statutory duty of the county legislative body to furnish the services of a physician to treat illnesses of inmates. *George v. Harlan*, 1998 WL 668637, *4 (Tenn. 1998). See also *Manus v. Sudbury*, 2003 WL 22888883, *4 (Tenn. Ct. App. 2003) ("By statute, county legislative bodies alone have the power and duty to provide medical care to prisoners confined in their jail."). Cf. *County Hosp. Auth. v. Bradley County*, 66 S.W.3d 888, 889 (Tenn. Ct. App. 2001); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1250 (6th Cir. 1989) ("Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their Eighth Amendment rights."); *Willis v. Barksdale*, 625 F.Supp. 411 (W.D. Tenn. 1985) (medical needs); *Andrews v. Camden County*, 95 F.Supp.2d 217, 228 (D. N.J. 2000). See also *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

Pursuant to state regulations, provision of medical services for the jail is to be the responsibility of a designated medical authority such as a hospital, clinic, or physician. There shall be an agreement between the county and the designated medical authority responsible for providing the medical services. The designated medical authority must be notified in instances where an inmate may be in need of medical treatment and the jail must document this notification. The health authority shall meet with the Sheriff and/or facility administrator at least annually. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(2). Note: Contracting out jail medical care does not relieve the county of its constitutional duty to provide adequate medical treatment to those in its custody. *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1250 (6th Cir. 1989). Medical decisions are the sole province of the responsible health care provider and shall not be countermanded by non-medical personnel. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(3)

All health care professional staff shall comply with applicable state and federal licensure, certification, or registration requirements. Verification of current credentials shall be available upon request from the provider. Health care staff shall work in accordance with profession specific job descriptions approved by the health authority. If inmates are assessed or treated by non-licensed health care personnel, the care shall be provided pursuant to written standing or direct orders by personnel authorized to give such orders. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(4)

In *Chattanooga-Hamilton County Hospital Authority v. Bradley County*, 33 TAM 11-1, 3/10/2008, Ramsey was shot by an off-duty Bradley County law enforcement officer and was transported to Chattanooga-Hamilton County Hospital Authority for treatment. The hospital was notified by a law enforcement officer to hold Ramsey. The Hospital Authority filed suit against Bradley County for Ramsey's medical bills pursuant to T.C.A. 41-4-115. The Trial Court awarded hospital judgment for the amount of bill representing time from admittance of Ramsey until the requested hold was removed. The Tennessee Court of Appeals affirmed the trial court's decision. The Tennessee Supreme Court reversed and

dismissed the case holding that simple notification by a county law enforcement agency asking a hospital to secure a patient until time of release from treatment does not operate to establish liability of a county for medical expenses under T.C.A. 41-4-115

In *Cornett v. Mathes*, 2008 WL 5110795 (E.D. Tenn., 2008) a prisoner's federal civil rights claim was dismissed for failure to state a claim for which relief could be granted. The prisoner alleged that the prison and several other defendants violated his Eighth Amendment right not to be subjected to cruel and unusual punishment when he was denied medical care in regards to an injured rib. By the prisoner's own allegation, however, he was seen by a medical provider, escorted to the emergency room for xrays, and later seen by a physician. While the prisoner's contentions may have stated a claim for medical malpractice, no Eighth Amendment claim is stated by allegations that a medical condition has been negligently diagnosed or treated. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

In *Crawley v. Bragg*, 2008 WL 5111116 (M.D. Tenn., 2008), the U.S. District Court of Middle Tennessee determined that a prison did not deny an inmate medical care in violation of the Eighth Amendment. The inmate did not suffer from a serious medical need. Further, even if the inmate had had a serious medical need, the prison did not act with deliberate indifference as the inmate was examined, blood work was done, and he was referred for follow-ups. U.S.C.A. Const.Amend. 8.

"The right to adequate medical care is guaranteed to convicted federal prisoners by the Cruel and Unusual Punishment Clause of the Eighth Amendment, and is made applicable to convicted state prisoners and to pretrial detainees (both federal and state) by the Due Process Clause of the Fourteenth Amendment." *Johnson v. Kernes*, 398 F.3d 868, 873 (6th Cir. 2005).

The Eighth Amendment's proscription of the failure to provide medical care to prisoners was delineated by the United States Supreme Court in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), as follows:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common-law view that "(i)t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself."

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.

Id. at 103-105, 97 S.Ct. at 290-291 (citations and footnotes omitted).

Although the Eighth Amendment's protections apply specifically to post-conviction inmates, the Due Process Clause of the Fourteenth Amendment operates to guarantee those same protections to pretrial detainees as well. Where any person acting under color of state law abridges rights secured by the Constitution or United States laws, including a detainee's Eighth and Fourteenth Amendment rights, 42 U.S.C. § 1983 provides civil redress.

The Supreme Court has adopted a mixed objective and subjective standard for ascertaining the existence of deliberate indifference in the context of the Eighth Amendment: [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. The objective component of the test requires the existence of a "sufficiently serious" medical need. A sufficiently serious medical need is predicated upon the inmate demonstrating that he or she "is incarcerated under conditions imposing a substantial risk of serious harm."

The subjective component, by contrast, requires a showing that the prison official possessed "a sufficiently culpable state of mind in denying medical care." Deliberate indifference requires a degree of culpability greater than mere negligence, but less than "acts or omissions for the very purpose of causing harm or with knowledge that harm will result." The prison official's state of mind must evince "deliberateness tantamount to intent to punish." "Knowledge of the asserted

serious needs or of circumstances clearly indicating the existence of such needs, is essential to a finding of deliberate indifference." Thus, "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment."

Miller v. Calhoun County, 408 F.3d 803, 812-813 (6th Cir. 2005) (citations omitted). See also *Butler v. Madison County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) ("When a prisoner suffers pain needlessly and relief is readily available, they have a cause of action against those whose deliberate indifference is the cause of suffering.").

"Mere negligence, mistake or difference of medical opinion in the provision of medical care to prisoners do not rise to an Eighth Amendment deprivation under the *Estelle* standard." *Dawson v. Kendrick*, 527 F.Supp. 1252, 1306 (D.C. W.Va. 1981). See also *Butler v. Madison County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) (Neither negligence nor gross negligence will support a § 1983 claim.). Moreover, officials are "entitled to rely on the professional judgment of trained medical personnel with regards to a prisoner's medical history and the need for medical care." *Miltier v. Beorn*, 896 F.2d 848, 854-855 (4th Cir. 1990). "A prisoner's difference of opinion with prison physicians regarding the type of treatment he should receive does not rise to the level of a constitutional violation." *Rauh v. Ward*, 112 Fed.Appx. 692, 695 (10th Cir. 2004); *LaFlame v. Montgomery County Sheriff's Department*, 3 Fed.Appx. 346 (6th Cir. 2001) (Jail inmate's difference of opinion with doctor over his diagnosis and treatment does not state an Eighth Amendment claim.); *Westlake v. Lucas*, 537 F.2d 857, 860 n. 5 (6th Cir.1976) (same).

Furthermore, not all inadequate medical treatment rises to the level of an Eighth Amendment violation. "Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle*, 429 U.S. at 106, 97 S.Ct. at 292. A plaintiff must prove "objectively that he was exposed to a substantial risk of serious harm," and that "jail officials acted or failed to act with deliberate indifference to that risk," which requires actual knowledge and deliberate disregard. *Victoria W. v. Larpenter*, 369 F.3d 475, 483 (5th Cir. 2004) (citation omitted). See also *Butler v. Madison County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) ("In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.") (citation omitted).

Inmates are not entitled to "unqualified access to health care." *Hudson v. McMillan*, 503 U.S. 1, 9, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992). Nor are they entitled to a medical program that caters to their every whim. *Meadows v. Woods*, 1994 WL 267957, *2 (W.D. Tenn. 1994). "The right to treatment is ... limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable." *Bowring v. Godwin*, 551 F.2d 44, 47-48 (4th Cir. 1977). See also *Dean v. Coughlin*, 804 F.2d 207, 215 (2d Cir.1986) ("The Constitution does not command that inmates be given the kind of medical attention that judges would wish to have for themselves....") (citation omitted); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981) ("[T]he essential test is one of medical necessity and not one simply of desirability."); *Feliciano v. Gonzalez*, 13 F.Supp.2d 151, 208 (D.C. P.R. 1998) (Under the Eighth Amendment, the standard of care for inmates does not include the most sophisticated care that money can buy, but only that which is reasonably appropriate within modern and prudent professional standards in the field of medicine and health.). Cf. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 308 (S.D. Ala. 1980) (The county is under no duty to provide prosthetic devices such as eyeglasses or dentures, or to provide routine diagnostic care for inmates. These services are not provided by the county to its free world citizens, and a person does not gain a greater right to services or benefits upon being convicted of a criminal offense.). But see *Newman v. Alabama*, 349 F.Supp. 278, 286-288 (M.D. Ala. 1972) (Upholding the right to prosthetic care for inmates in a long-term facility.).

Budgetary constraints do not justify the intentional withholding of necessary medical care. *Jones v. Johnson*, 781 F.2d 769, 770-72 (9th Cir. 1986). However, the county is required only to furnish inmates with routine and emergency medical care. The county is not required to furnish other and additional elective medical care, which is not essential to the immediate welfare of the inmates and the lack of which poses no threat to life or limb. See *Kersh v. Bounds*, 501 F.2d 585, 588-589 (4th Cir. 1974); *Jackson v. Fair*, 846 F.2d 811, 817 (1st Cir.1988) ("Although the Constitution does require that prisoners be provided with a certain minimum level of medical treatment, it does not guarantee to a prisoner the treatment of his choice."). See also *Buckley v. Correctional Medical Services, Inc.*, 125 Fed.Appx. 98 (8th Cir. 2005) (Inmate failed to establish that 20-month delay in scheduling elective elbow surgery after it was recommended was deliberate indifference to inmate's serious medical need, as required to support inmate's § 1983 action against medical provider.); *Grundy v. Norris*, 26 Fed.Appx. 588 (8th Cir. 2001)

(Delay in shoulder surgery did not amount to constitutional violation where medical evidence showed that the surgery was elective and the delay was not of great concern.); *Olson v. Stotts*, 9 F.3d 1475 (10th Cir. 1993) (An 11-day delay in elective heart surgery did not constitute deliberate indifference.); *Cook v. Hayden*, 1991 WL 75648, *3 (D. Kan. 1991) ("[T]he mere delay of elective surgery does not establish a violation of an inmate's protected rights."). *But see McCabe v. Prison Health Services*, 117 F.Supp.2d 443, 450 (E.D. Pa. 1997) (The fact that a surgery is elective "does not abrogate the prison's duty, or power, to promptly provide necessary medical treatment for prisoners."); *Delker v. Maass*, 843 F.Supp. 1390, 1400 (D. Or. 1994) ("Where surgery is elective, prison officials may properly consider the costs and benefits of treatment in determining whether to authorize that surgery, but the words 'elective surgery' are not a talisman insulating prison officials from the reach of the Eighth Amendment. Each case must be evaluated on its own merits.").

Continuity of care is required from admission to transfer or discharge from the facility, including referral to community-based providers, when indicated. When health care is transferred to providers in the community, appropriate information shall be shared with the new providers in accordance with consent requirements. Prior to release from custody or transfer, inmates with known serious health conditions shall be referred to available community resources by the jail's health care provider currently providing treatment. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(5).

All intersystem transfer inmates (transferred from one confinement facility to another within the same county's jurisdiction) shall receive a health screening by health-trained or qualified health care personnel, which commences on their arrival at the facility. All findings are recorded on a screening form approved by the health authority. At a minimum, the screening includes the following:

- A review of the inmate's medical, dental, and mental health problems;
- Current medications; and
- Current treatment plan. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(10)

Detoxification from alcohol, opiates, hypnotics, and other stimulants shall be conducted under medical supervision in accordance with local, state, and federal laws. When performed at the facility, detoxification shall be prescribed in accordance with clinical protocols approved by the health authority. Specific criteria shall be established for referring symptomatic inmates suffering from withdrawal or intoxication for more specialized care at a hospital or detoxification center. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(16)

Informed consent standards of the jurisdiction shall be observed and documented for inmate care in a language understood by the inmate. In the case of minors, the informed consent of a parent, guardian, or a legal custodian applies when required by law. Inmates routinely have the right to refuse medical interventions. When health care is rendered against the inmate's will, it shall be in accordance with state and federal laws and regulations. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(22)

The use of inmates in medical, pharmaceutical, or cosmetic experiments is prohibited. This does not preclude inmate access to investigational medications on a case-by-case basis for therapeutic purposes in accordance with state and federal regulations. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(24).

When an inmate is placed in segregation for health concerns, health care personnel shall be informed as soon as practical and provide assessment and review as indicated by the protocols established by the health authority. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(27).

Medical/dental instruments and supplies (syringes, needles, and other sharp instruments) shall be inventoried, securely stored, and use shall be controlled. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(28).

Pregnant inmates shall have access to obstetrical services (prenatal, partum, and post-partum care) by a qualified health care provider. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(27)

Inmates with chronic medical conditions, such as diabetes, hypertension, and mental illness shall receive periodic care by a qualified health care provider in accordance with individual treatment plans that include monitoring of medications and laboratory testing. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(30)

The health authority shall develop and approve protocols for identifying and evaluating major risk management events related to inmate health care, including inmate deaths, preventable adverse outcomes, and serious medication errors. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(33).

Medical Emergencies

In case of medical emergencies, there shall be specific information readily accessible to all employees such as telephone numbers and names of persons to be contacted, so that professional medical care can be received. There shall also be available the names and telephone numbers of persons to contact in case of death. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(25).

Medical Screening

Reference Number: CTAS-1371

An initial medical screening must be performed on all inmates upon admission to the jail prior to their placement in the general housing area. The findings shall be recorded on a printed screening form. The officer performing this duty shall check for:

1. A serious illness;
2. A comatose state;
3. Obvious wounds;
4. Prescribed medications; and,
5. Suicide risk assessment, including suicidal ideation or history of suicidal behavior or other mental health illness. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(8)

It is generally recognized that prompt medical screening is a medical necessity in pretrial detention facilities. When an inmate presents with a treatable medical problem, jail officials are required to ensure that the inmate receives proper medical treatment. *See Neal v. Swigert*, 2005 WL 1629779, *3 (S.D. Ohio 2005) (Conducting a rectal examination on an inmate complaining of urological problems during an initial medical screening does not amount to cruel and unusual punishment.); *Aaron v. Finkbinder*, 793 F.Supp. 734, 737 (E.D. Mich. 1992) (Sheriff's deputy who booked insulin-dependent diabetic prisoner was not deliberately indifferent to prisoner's medical needs, even though he failed to record on prisoner's medical screening chart that prisoner needed to be provided with insulin, where he called and advised clinic that prisoner was diabetic and in need of insulin.).

The nonconsensual testing of inmates for tuberculosis is constitutional. *Karlovetz v. Baker*, 872 F.Supp. 465 (N.D. Ohio 1994), *citing Dunn v. White*, 880 F.2d 1188 (10th Cir.1989) (holding that a nonconsensual test for HIV does not violate a prisoner's constitutional rights). It has been held that a prison's failure to test all incoming inmates for tuberculosis and other serious communicable diseases violates noninfected inmates' Eighth Amendment rights. *LaReau v. Manson*, 651 F.2d 96, 109 (2nd Cir.1981); *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974) (same). *Cf. Zaire v. Dalsheim*, 698 F.Supp. 57, 60 (S.D. N.Y. 1988) (holding that the forcible administration of inoculations for diphtheria-tetanus administered solely for the protection of the prisoner and other inmates, and not for purposes such as illicit punishment or nonconsensual psychotherapy, did not violate the constitution), *aff'd*, 904 F.2d 33 (2d Cir. 1990); *Ormond v. State*, 599 So.2d 951, 957-958 (Miss. 1992) (holding that the state's interest in eliminating the spread of infectious disease among closely confined jail population outweighed any privacy interest of defendant; accordingly, taking defendant to health department for treatment of his gonorrhea did not violate the inmate's privacy interest).

Pursuant to Tennessee law, the sheriff is authorized to hire a female registered nurse and a male registered nurse who are authorized to make complete physical examinations of all persons committed to the custody of the sheriff for the purpose of preventing the spread of any contagious disease. Such physical examinations may include the taking of blood tests and Pap smear tests and any other tests that are approved and recommended by the county health officer. All females committed to the custody of the sheriff are to be examined only by the female registered nurse hired for that purpose, and all males committed to the custody of the sheriff are to be examined by the male nurse hired for that purpose. T.C.A. § 41-4-138. *See Haywood County v. Hudson*, 740 S.W.2d 718, 719 (Tenn. 1987); *George v. Harlan*, 1998 WL 668637, *4 (Tenn. 1998) ("It appears to this Court that the services of nurses to prevent the spread of disease, and the services of a physician to treat illnesses are separate and distinct functions, the furnishing of the former being a statutory duty of the sheriff, and the furnishing of the latter being a statutory duty of the county legislative body.").

HIV Testing of Persons Convicted of Sexual Offenses-Release of Test Results

Reference Number: CTAS-2134

TCA 39-13-521 provides for:

- (a) When a person is initially arrested for violating § 39-13-502, § 39-13-503, § 39-13-506, § 39-13-522,

§ 39-13-531 or § 39-13-532 that person shall undergo human immunodeficiency virus (HIV) testing immediately, or not later than forty-eight (48) hours after the presentment of the information or indictment, with or without the request of the victim. A licensed medical laboratory shall perform the test at the expense of the person arrested. The person arrested shall obtain a confirmatory test when necessary and shall be referred to appropriate counseling.

(b) (1) The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim.

(2) The result of any HIV test required under this section is not a public record and shall be available only to:

(A) The victim;

(B) The parent or guardian of a minor or incapacitated victim;

(C) The attending physician of the person tested and of the victim;

(D) The department of health;

(E) The department of correction;

(F) The person tested; and

(G) The district attorney general prosecuting the case.

(c) If the arrestee is convicted, the court shall review the HIV test results prior to sentencing.

(d) (1) For purposes of this section, "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(2) For purposes of this section, "HIV test" means a test of an individual for the presence of human immunodeficiency virus, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of health shall promulgate rules designating the proper test method to be used for this purpose.

(3) Nothing in this section shall be construed to require the actual transmission of HIV in order for the court to consider it as a mandatory enhancement factor.

(e) Upon the conviction of the defendant for a violation of § 39-13-513, § 39-13-514 or § 39-13-515, the court shall order the convicted person to submit to an HIV test. The test shall be performed by a licensed medical laboratory at the expense of the defendant. The defendant shall obtain a confirmatory test when necessary. The defendant shall be referred to appropriate counseling. The defendant shall return a certified copy of the results of all tests to the court. The court shall examine results in camera and seal the record. For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding the provisions of subdivision (b)(2). The district attorney general shall be required to file a written, signed request with the court stating the reason the court should grant permission for the district attorney general to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test in a prosecution for aggravated prostitution.

Medical Segregation

Reference Number: CTAS-1372

Inmates suffering from communicable diseases and those who are sick but do not require hospitalization shall be housed separate from other inmates as recommended by health care authorities.. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(26).

Placement in medical isolation is a permissible administrative intake procedure when an inmate refuses to take a TB test. *Johnson v. County of Nassau*, 2005 WL 991700 (E.D. N.Y. 2005), citing *Hewitt v. Helms*, 459 U.S. 460, 468, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). See also *Davis v. City of New York*, 142 F.Supp.2d 461, 464 (S.D. N.Y. 2001) (The brief placement of an inmate in medical isolation in order to

restrict his exposure to the general population and facilitate a medical examination in consequence of his refusal to submit a blood sample did not violate any constitutional rights because it served the legitimate penological interest of insuring the health and safety of other prisoners.); *Jones-Bey v. Wright*, 944 F.Supp. 723, 732 (N.D. Ind. 1996) (Placement of prisoner who refused to submit to TB screening test in medical isolation unit for maximum of 40 days did not violate Eighth Amendment cruel and unusual punishments clause.); *Westbrook v. Wilson*, 896 F.Supp. 504 (D. Md. 1995) (Regulation and practice of placing inmates who refuse to submit to test for TB in medical segregation is constitutional; test is minimally intrusive, related to legitimate prison management goal of protecting other inmates and staff, and placement in medical segregation is reasonable.).

Several federal circuit courts have upheld against constitutional challenge the practice of segregating HIV-positive prisoners from the rest of the prison population on the theory that such segregation is a reasonable anticontagion measure even though it incidentally and necessarily effects disclosure of medical information. In *Harris v. Thigpen*, 941 F.2d 1495, 1521 (11th Cir. 1991), the Eleventh Circuit Court of Appeals found that the decision to segregate HIV-positive inmates from the general prison population served a legitimate penological interest in reducing the transmission of HIV and reducing the threat of violence. See also *Onishea v. Hopper*, 171 F.3d 1289, 1297-1299 (11th Cir. 1999) (allowing segregation of HIV-positive prisoners), *cert. denied*, 528 U.S. 1114, 120 S.Ct. 931, 145 L.Ed.2d 811 (2000). Other courts of appeals have likewise upheld the segregation of HIV-positive inmates from the general population. See, e.g. *Moore v. Mabus*, 976 F.2d 268, 271 (5th Cir. 1992) (finding HIV segregation policy reasonably related to legitimate penological interests); *Matthews v. Graham*, 235 F.3d 1339 (Table) (5th Cir. 2000) (Placement in administrative segregation in a county jail for three months due to HIV-positive status serves a legitimate penological interest.); *Carter v. Lowndes County*, 89 Fed.Appx. 439 (5th Cir. 2004) (County's segregation policy for inmates with contagious diseases served a legitimate penological interest.); *Camarillo v. McCarthy*, 998 F.2d 638, 640 n. 2 (9th Cir. 1993) (reserving question of whether HIV segregation policy is constitutional but holding officers entitled to qualified immunity); *Bowman v. Beasley*, 8 Fed.Appx. 175, 178-179 (4th Cir. 2001) (The practice of segregating HIV-positive inmates is within the wide deference afforded prison administrators, and it is reasonably related to legitimate penological interests.). Cf. *Anderson v. Romero*, 72 F.3d 518, 525 (7th Cir.1995) (holding that the constitutional rights of an HIV-positive inmate are not infringed when prison officials undertake to warn prison officials and inmates who otherwise may be exposed to contagion, even if those warnings are administered on an ad hoc basis).

In *McRoy v. Sheahan*, 2005 WL 1926560 (N.D. Ill. 2005), the district court found that jail officials were not deliberately indifferent to the presence of tuberculosis bacteria in the jail in violation of the 14th Amendment rights of a pretrial detainee who contracted latent form of tuberculosis where jail officials followed the screening, isolation, and treatment policies of the Centers for Disease Control (CDC) and the American Thoracic Society (ATS).

Temporary inconveniences incurred while being held in medical segregation usually do not rise to the level of a constitutional violation. *Taggart v. MacDonald*, 131 Fed.Appx. 544, 546 (9th Cir. 2005) (upholding dismissal of inmate's claims regarding his confinement in medical segregation because his allegations that he was temporarily deprived of reading material, temporarily unable to properly cleanse himself, and was yelled at by a prison official, were not objectively serious enough to rise to a constitutional claim).

Information to At-Risk Employees Regarding Infectious Diseases

Reference Number: CTAS-1468

Where there has been a potential exposure to an infectious disease in a correctional facility, the institution is required to inform affected employees, contract employees and visitors. When an incident occurs that may have resulted in exposure to disease, the institution must test the inmate, with or without his or her consent, to determine if the inmate is infected with a blood-borne pathogen such as hepatitis B or HIV. The institution is required to disclose the results of the test to each employee, law enforcement officer or visitor who reasonably believes he or she was potentially exposed to a life-threatening disease or pathogen. However, confidential medical information is not to be released to the general public. T.C.A. § 41-51-102.

Similar provisions in T.C.A. § 39-13-112 apply in cases where a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, employee of the Department of Correction or Department of Children's Services, emergency medical or rescue worker, EMT, or paramedic is the victim of an aggravated assault and comes into actual contact with blood or other body fluid of the arrestee. When that occurs, upon the request of the victim, the arrestee shall undergo HIV testing immediately. The test shall be performed by a licensed medical laboratory at the expense of the arrestee.

Test results are not a public record and are available to only the victim and certain other people listed in the statute. If the arrestee is infected with HIV, that person shall be liable for the victim's medical bills and other expenses related to the victim's exposure to HIV upon a finding that such exposure was from the arrestee.

Protection Against Blood Borne Pathogens

Reference Number: CTAS-2137

The superintendent, director or warden of any correctional institution or county or municipal jail or workhouse shall provide training in universal precaution from blood borne pathogens for all employees at risk for potential occupational exposure to blood borne pathogens, including, but not limited to, hepatitis B or HIV (AIDS). Voluntary vaccinations shall be provided and strongly encouraged for all employees at risk. In order to increase the awareness of the need for practicing universal precaution, the superintendent, director or warden may periodically warn all employees at risk of potential exposure that a portion of the inmate population is likely to be infected with a blood borne pathogen. TCA 41-51-101

Physical Examination

Reference Number: CTAS-1373

A more complete examination shall be completed on inmates within fourteen (14) days of their initial confinement date. If the facility can document that health appraisal was conducted within the previous ninety (90) days, this fourteen (14)-day physical is not required unless medical conditions dictate otherwise. This examination shall be performed by a physician or a person who has been designated by a physician as capable of performing such examination. If a designee performs the examination he/she must do so under supervision of a physician and with a protocol or set of instructions and guidelines from the physician. This examination shall include:

- (a) Inquiry into current illness and health problems, including those specific to women;
- (b) Inquiry into medications taken and special health requirements;
- (c) Screening of other health problems designated by the responsible physician;
- (d) Behavioral observation, including state of consciousness and mental status;
- (e) Notification of body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, etc.;
- (f) Condition of skin and body orifices, including rashes and infestations;
- (g) Disposition/referral of prisoners to qualified medical personnel on an emergency basis;
- (h) A review of the initial intake receiving screening; and,
- (i) An individual treatment plan as appropriate.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(9).

An intake physical examination is advisable in order to screen out drug addicts, alcoholics, and physical ailments for treatment, to avoid contagion within the jail population, and as a public health function. *Collins v. Schoonfield*, 344 F.Supp. 257, 277 (D. Md. 1972) (Lack of complete physical examination for inmates upon entry into city jail did not constitute cruel and unusual punishment under constitutional standards as they existed in 1972.). See also *Smith v. Swanson*, 2004 WL 1157433 (Ohio App. 2004) (County jail inmate's § 1983 complaint alleging that upon his arrival at the jail he was denied a proper physical examination failed to allege "serious deprivation of human need" as required to state a claim for a violation of Eighth Amendment's cruel and unusual punishment cause.); *Mawby v. Ambroyer*, 568 F.Supp. 245, 250 (E.D. Mich. 1983) (Failure to provide incoming inmates with a physical exam found not to violate the Eighth Amendment absent claim that inmates had actually been denied treatment of any serious medical needs.).

Sick Call

Reference Number: CTAS-1374

Sick call, conducted by a physician or other person designated by a physician as capable of performing such duty, shall be available to each inmate according to a written procedure for sick call. All inmates must be informed of these procedures including any copay requirements, as well as procedures for submitting grievances, upon admission. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(11).

While society does not expect that inmates will have unqualified access to health care, a jail official who does not attend to the serious medical needs of an inmate violates that inmate's constitutional right. See *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992). See also *Dawson v. Kendrick*, 527 F.Supp. 1252, 1308 (S.D. W.Va. 1981) (holding that the "denial of adequate medical screening, classification, record keeping, sick call procedures and timely access to care at the Mercer County Jail constitutes deliberate indifference to the potentially serious medical needs of the pre-trial detainees and convicted prisoners alike in violation of the Eighth Amendment"); *Facility Review Panel v. Holden*, 356 S.E.2d 457, 460-461 (W.Va. 1987) (holding that failure to medically screen inmates upon admission, to keep medical records, or to hold regular sick call violated prohibition against cruel and unusual punishment under federal constitution).

It has been held that sick call administered by prison security staff instead of medical staff violates constitutional standards and subjects prisoners to cruel and unusual punishment. *Carty v. Farrelly*, 957 F.Supp. 727, 737-738 (D. Virgin Islands 1997). It has also been held that providing inadequate medical staff effectively denies inmates access to diagnosis and treatment and constitutes deliberate indifference. *Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979). However, the mere fact that staff is not on "sick call" seven days a week does not constitute deliberate indifference to the serious medical needs of prisoners so long as emergency treatment is available during weekends and holidays. *Luca v. Scalzo*, 892 F.2d 83 (9th Cir. 1989) (The failure to provide regular medical office hours for two out of every seven days for nonemergency medical needs is not evidence of serious understaffing establishing deliberate indifference.); *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir.1990) (Only delays that cause substantial harm violate the Eighth Amendment.). See also *Gregory v. McGann*, 1992 WL 559661 (N.D. Ind. 1992) (finding policy of one day a week hospital sick call (except for emergencies) does not offend the Eighth Amendment); *Pounds v. Myers*, 76 Fed.Appx. 630 (6th Cir. 2003) (holding that allegations that nurse told inmate that he could be seen for only one complaint per sick call along with one day suspension of sick call privileges failed to state a claim upon which relief could be granted absent any allegation that the delay in receiving treatment had any detrimental effect on inmate's condition); *County of El Paso v. Dorado*, --- S.W.3d ---, 2005 WL 3254498 (Tex. App. 2005) ("Evidence of sick call requests, examinations, diagnoses and medications may rebut an inmate's claim of deliberate indifference.").

Medications

Reference Number: CTAS-1375

Facilities shall confiscate all medications in the possession of an inmate at the time of admission to the facility. The identification of and the need for such medication shall be verified by a physician or qualified health care personnel before it is administered. This shall include controlled drugs and injections. There must be strict control of medications to be issued to inmates. Medications issued to inmates shall be strictly controlled and shall be kept in a secure place within the administrative or medical offices in the facility. All medications shall be prescribed by a physician or his designee at the time of use. An officer or qualified health care personnel shall verify that the medication is taken as directed and a medication receipt system is established. This shall include controlled drugs and injections. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(18), (19) and (20).

It has been held that a prison official's actions of confiscating a diabetic prisoner's stockpiled medication and requiring him to take the medication under supervision did not amount to deliberate indifference to the prisoner's serious medical needs. *Jackson v. Lucine*, 119 Fed.Appx. 70 (9th Cir. 2004). See also *Loggins v. Phils*, 10 Fed.Appx. 793 (10th Cir. 2001) (Complaint alleging that a detention facility dispensed medication to inmate without first performing a physical examination or securing a doctor's prescription, resulting in significant side effects, stated, at most, a claim of medical malpractice, and did not state a claim under § 1983 for violation of civil rights, absent allegation of facts evidencing deliberate indifference to serious medical needs.).

"Differences in opinion by a doctor and a prisoner over the appropriate medication to be prescribed is a disagreement over a treatment plan and does not implicate the Eighth Amendment. The Eighth Amendment is not implicated by prisoners' complaints over the adequacy of the care they received when those claims amount to a disagreement over the appropriateness of a particular prescription plan. At most, such allegations may rise to the level of a medical malpractice claim, a type of action in which the Eighth Amendment is not implicated." *Veloz v. New York*, 339 F.Supp.2d 505, 525 (S.D. N.Y. 2004) (citations omitted). See *Houston v. Zeller*, 91 Fed.Appx. 956, 957 (5th Cir. 2004) (Inmate's disagreement with prison physician's choice of medications cannot support a claim of cruel and unusual punishment.); *White v. Correctional Medical Services Inc.*, 94 Fed.Appx. 262 (6th Cir. 2004) (same); *Chance v. Armstrong*, 143 F.3d 698, 702, 703 (2d Cir. 1998) (same). See also *Edens v. Larson*, 110 Fed.Appx. 710 (7th Cir. 2004) (holding that a doctor's refusal to dispense a medicine containing barbiturates until he could directly observe and evaluate an inmate's headaches was not so substantial a departure from

reasonable and accepted practice as to imply deliberate indifference, so as to support the inmate's Eighth Amendment claim in a § 1983 suit); *Kittelson v. Nafrawi*, 112 Fed.Appx. 946 (5th Cir. 2004) (Inmate's claim that his receipt of other inmates' medication was negligent, medical malpractice, and illegal is not sufficient to establish deliberate indifference.).

The Eighth Amendment proscription on the infliction of cruel and unusual punishment prohibits jail guards from "intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Zentmyer v. Kendall County*, 220 F.3d 805, 810 (7th Cir. 2000) (citations omitted). "Refusing to provide prescribed medication may violate the Constitution. However, as with any other Eighth Amendment claim, plaintiff will have to show both that the denial of the medication caused a substantial risk of serious harm to his health *and* that defendants were deliberately indifferent to his health." *King v. Frank*, 328 F.Supp.2d 940, 948 (W.D. Wis. 2004) (citations omitted). *See also Cherry v. Berge*, 98 Fed.Appx. 513, 515 (7th Cir. 2004) (Prison staff act with deliberate indifference if they refuse to carry out a doctor's prescribed treatment in the face of a substantial risk to an inmate's health.).

The mere delay in administering medication to an inmate does not in and of itself constitute deliberate indifference to a serious medical need. *Van Court v. Lehman*, 137 Fed.Appx. 948 (9th Cir. 2005) (One-day delay in administering pain medication to inmate after he was injured in attack by another inmate did not demonstrate deliberate indifference to a serious medical need.). "Where the alleged lapses in treatment are minor and inconsequential in that they do not result in substantial risk of injury, an Eighth Amendment claim cannot be made out." *Atkins v. County of Orange*, 372 F.Supp.2d 377, 413 (S.D. N.Y. 2005). *See also Smith v. Carpenter*, 316 F.3d 178, 188 (2nd Cir. 2003) (Noting that "[a]lthough [inmate] suffered from an admittedly serious underlying condition, he presented no evidence that the two alleged episodes of missed medication resulted in permanent or on-going harm to his health..."); *Hill v. Dekalb Regional Youth Detention Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994) ("An inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of the delay in the medical treatment to succeed."). The failure to "dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild headache or minor fatigue - the sorts of ailments for which many people who are not in prison do not seek medical attention - does not ... violate the Constitution." *Zentmyer v. Kendall County*, 220 F.3d 805, 810 (7th Cir. 2000) (citations omitted).

It has been held that jail personnel are not deliberately indifferent to an inmate's serious medical need when they unsuccessfully attempt to get an inmate to take his prescribed medication. *Atwell v. Hart County*, 122 Fed.Appx. 215, 218 (6th Cir. 2005). It has also been held that jail personnel do not act with deliberate indifference in not dispensing an inmate's medication when the inmate refuses to comply with the rules for receiving medication. *Cherry v. Berge*, 98 Fed.Appx. 513, 515 (7th Cir. 2004), *citing Hernandez v. Keane*, 341 F.3d 137, 147 (2nd Cir. 2003) (no deliberate indifference where doctors attempted to provide post-operative treatment but inmate declined some of the treatment); *Watkins v. City of Battle Creek*, 273 F.3d 682, 686 (6th Cir. 2001) (Staff were not deliberately indifferent in failing to treat detainee when he denied need for treatment and staff did not force him to accept treatment.); *Logan v. Clarke*, 119 F.3d 647, 650 (8th Cir. 1997) (Doctor was not deliberately indifferent when inmate did not follow treatment instructions.). *See also Holley v. Deal*, 948 F.Supp. 711, 718-719 (M.D. Tenn. 1996) (Prison officials did not act with deliberate indifference in forcibly administering medication to inmate, and thus did not subject him to cruel and unusual punishment in violation of Eighth Amendment.).

In *Quint v. Cox*, 348 F.Supp.2d 1243, 1251 (D. Kan. 2004), the district court found that the sheriff's practice of not having a medical nurse or better trained personnel on staff to dispense medications to inmates did not amount to deliberate indifference to the inmates' serious medical needs.

Inmates do not have a constitutional right to take medications in private. *Chevrette v. Marks*, 558 F.Supp. 1133, 1134 (M.D. Pa. 1983) (An inmate is not subjected to cruel and unusual punishment simply because he is not allowed to take his prescribed medication in private.).

The jail's written policy and procedure must prohibit inmates from performing patient care services, scheduling health care appointments or having access to medications, health records or medical supplies and equipment. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(6).

At least one federal district court has held that the use of inmate trustees to carry out sensitive tasks such as distributing drugs violates the Eighth Amendment. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980).

Medical Records

Reference Number: CTAS-1376

Medical and mental health records on the inmate's physical condition on admission, during confinement,

and at discharge shall be kept in a separate file from the inmate's other facility records. The medical record shall indicate all medical orders issued by the facility's physician and/or any other health care personnel who are responsible for rendering health care services. These medical records shall be retained for a period of ten (10) years after the inmate's release. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(21).

Jail personnel have a duty to maintain complete medical records on each inmate. Records should also be kept on drugs administered to inmates. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980) (The failure to keep adequate medical records constitutes a danger to the lives and health of inmates.). See also *Dawson v. Kendrick*, 527 F.Supp. 1252, 1306-1307 (S.D. W.Va. 1981) (The Eighth Amendment has also been held to be implicated when a prison's "inadequate, inaccurate and unprofessionally maintained medical records" give rise to "the possibility for disaster stemming from a failure to properly chart" medical care received by prisoners.), citing *Burks v. Teasdale*, 492 F.Supp. 650, 676 (W.D. Mo. 1980).

Whether prisoners have any constitutional privacy rights in their prison medical records and treatment appears to be an unsettled question. In *Doe v. Delie*, 257 F.3d 309 (3d Cir. 2001), the Third Circuit Court of Appeals joined the Second Circuit in recognizing that the constitutional right to privacy in one's medical information exists in prison.

We acknowledge, however, that a prisoner does not enjoy a right of privacy in his medical information to the same extent as a free citizen. We do not suggest that Doe has a right to conceal this diagnosed medical condition from everyone in the corrections system. Doe's constitutional right is subject to substantial restrictions and limitations in order for correctional officials to achieve legitimate correctional goals and maintain institutional security.

Specifically, an inmate's constitutional right may be curtailed by a policy or regulation that is shown to be "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987).

Id. at 317. See *Powell v. Schriver*, 175 F.3d 107, 112 (2d Cir. 1999).

In *Anderson v. Romero*, 72 F.3d 518 (7th Cir. 1995), the Seventh Circuit Court of Appeals recognized a "qualified constitutional right to confidentiality of medical records and medical communications" outside of prison but concluded that it was an open question as to whether the right applied in the prison setting.

Id. at 522. The court concluded that prison officials were entitled to qualified immunity because, if such a right existed, it was not clearly established in 1992 or in 1995. *Id.* at 524.

The Sixth Circuit does not recognize the right to privacy in one's medical information in any setting. In *Doe v. Wigginton*, 21 F.3d 733, 740 (6th Cir.1994), the Sixth Circuit Court of Appeals explicitly held that the right of privacy is not implicated at all by prison official's disclosure of an inmate's medical status. *Id.* at 740. See *J.P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981) (concluding that "the Constitution does not encompass a general right to nondisclosure of private information"); *Tokar v. Armontrout*, 97 F.3d 1078, 1084-1085 (8th Cir. 1996) (noting that prisoners do not have a constitutional right to confidentiality of their medical records). See also *Reeves v. Engelsgerd*, 2005 WL 3534906, *4 (E.D. Mich. 2005) ("Although other Circuits have recognized a constitutional right to privacy in the information in one's medical records, the Sixth Circuit has specifically held that such a right generally does not exist.").

The Tennessee Supreme Court has held that the confidentiality of records is a statutory matter left to the legislature. *Doe v. Sundquist*, 2 S.W.3d 919 (Tenn. 1999), citing *Tennessean v. Electric Power Bd. of Nashville*, 979 S.W.2d 297, 300-301 (Tenn. 1998); *Thompson v. Reynolds*, 858 S.W.2d 328 (Tenn. Ct. App. 1993).

Pursuant to T.C.A. § 10-7-504(a)(1), the medical records of county inmates shall be treated as confidential and shall not be open for inspection by members of the public.

First Aid Training

Reference Number: CTAS-1377

At least one person per shift, assigned to work at the facility, shall be trained in First Aid/CPR, as defined by the American Red Cross, and CPR, as defined by the American Heart Association. Training shall also cover:

- (a) Awareness of potential emergency situations;
- (b) Transfer to appropriate health care provider;
- (c) Recognition of symptoms of illness most common to the facility; and,
- (d) Giving medications to inmates.

In addition, the health authority shall approve policies and procedures that insure that emergency supplies and equipment are readily available and in working order. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(15).

First aid kits shall be available and a physician shall approve the number, contents, and location of such kits on an annual basis. Documentation of such approval must be in the facility's permanent records or attached to the kit itself. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(7).

"Jail personnel should be trained in basic health care delivery and must be trained in emergency health techniques." *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980). See also *Bunyon v. Burke County*, 306 F.Supp.2d 1240, 1258 (S.D. Ga. 2004) (It is undisputed that jail staff are charged with ensuring that an inmate's medical needs are met while he or she is detained at the county Jail. Thus, the need to train personnel in the constitutional requirements of providing adequate medical care can be said to be so obvious that failure to do so could properly be characterized as deliberate indifference to constitutional rights.); *Brock v. Warren County*, 713 F.Supp. 238, 243 (E.D. Tenn. 1989) (finding that the sheriff and the county commissioners were deliberately indifferent to plaintiffs' decedent's constitutional rights in failing to provide minimal medical training to the jail guards).

County Liability for Inmate Medical Care

Reference Number: CTAS-1378

In *Chattanooga-Hamilton County Hosp. Authority v. Bradley County*, 66 S.W.3d 888 (Tenn. Ct. App. 2001), the plaintiff hospital (Erlanger Health System) sued the county for the payment of medical bills for care provided to an arrestee who was shot by Bradley County officers during his apprehension. The pertinent facts were as follows. "A Bradley County officer shot Dunn in the process of an arrest, and Bradley County EMS requested an air ambulance service from Erlanger. Dunn was transported to Erlanger, accompanied by a County deputy, and was admitted. Dunn was under a police hold while in Erlanger at the request of Bradley County, and upon his release from the hospital, was picked up by the Bradley County Sheriff's Department and taken to the County Jail." *Id.* at 889.

Noting that the trial court had correctly found that it was the county's duty to provide medical care to Dunn, the Tennessee Court of Appeals cited the United States Supreme Court's opinion in *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983), officers attempted to detain an individual who attempted to flee, and the individual was shot by an officer. An ambulance was summoned and the individual was taken to Massachusetts General Hospital. The hospital sued the City of Revere seeking payment for medical services rendered. Justice Blackman, speaking for the Court, said at p. 2983 of the Opinion:

The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons, such as Kivlin, who have been injured while being apprehended by the police. In fact, the due process rights of a person in Kivlin's situation are at least as great as the Eighth Amendment protections available to a convicted prisoner. (Citation omitted). We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require medical attention. (Citations omitted). Whatever the standard may be, Revere fulfilled its constitutional obligation by seeing that Kivlin was taken promptly to a hospital that provided the treatment necessary for his injury. And as long as the governmental entity ensures that the medical care needed is in fact provided, the Constitution does not dictate how the cost of that care should be allocated as between the entity and the provider of the care. That is a matter of state law.

Id. at 889 - 890.

Pursuant to T.C.A. § 41-4-115, it is the duty of the county legislative body to provide medical attendance for all prisoners confined in the county jail. The statute is silent with respect to persons who have yet to be confined in the county jail. Relying on this statute, the county argued that state law does not require the county to pay for medical services on the facts of this case. Nevertheless, despite the fact that the United States Supreme Court's holding in *Revere* clearly states that the cost of medical care provided to persons such as Dunn is a matter of state law, the Tennessee Court of Appeals held that implicit in the Supreme Court's holding in *Revere* "is the requirement that the State or responsible governmental agency, in discharging its duty to provide these medical services, must provide the method for payment of these services." *Id.* at 890.

To bolster its conclusion, the Court of Appeals cited the Tennessee Supreme Court's decision in *Bryson v. State*, 793 S.W.2d 252 (Tenn. 1990). In *Bryson*, the issue was whether or not the state of Tennessee is liable for the payment of medical expenses incurred by a convict who is injured while on a furlough from a

state institution. The Tennessee Supreme Court held that the state is liable for the medical costs of state prisoners who are out of prison on a temporary furlough. Central to the Court's holding were its findings that the prisoner remained in the state's custody while on furlough and remained a prisoner for the purpose of medical treatment, absent a waiver by the prisoner of the right (under state law) to have the state provide him with medical care. *Bryson*, 793 S.W.2d at 254-255.

Noting the Tennessee Supreme Court's finding that being "in custody" was sufficient to trigger governmental liability for the prisoner's care, the Court of Appeals, finding that Dunn was in the custody of the Bradley County Sheriff's Office while he remained in the hospital, held that the county was liable for Dunn's medical expenses even though he was not confined in the county jail. 66 S.W.3d at 891.

In the case of *In re Estate of Davis*, 1994 WL 44448 (Tenn. Ct. App. 1994), the single issue was whether the estate of a deceased state inmate was liable for the decedent's hospital expenses irrespective of the responsibility of the state of Tennessee to the estate of the decedent for these expenses. Noting that "[t]here is nothing in the language of our statutes to suggest Mr. Davis's status as a prisoner precludes him or his estate from being liable to pay the hospital for his medical care," the Tennessee Court of Appeals held that the estate of the deceased state inmate was liable for hospital expenses incurred while the inmate was serving his sentence in the county jail. See also *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 n. 7, 103 S.Ct. 2979, 2984 n. 7, 77 L.Ed.2d 605 (1983) ("Nothing we say here affects any right a hospital or government entity may have to recover from a detainee the cost of medical services provided to him.").

The attorney general has opined that if an inmate has health insurance coverage, there appears to be no provision of law that would allow the insurance carrier to avoid paying covered medical costs solely because the insured was incarcerated in the county jail at the time the claim arose. However, an individual loses eligibility for TennCare upon becoming incarcerated. Accordingly, TennCare may properly deny coverage to an individual who is incarcerated either before or after conviction. Op. Tenn. Atty. Gen. 97-010 (February 4, 1997). See also Op. Tenn. Atty. Gen. 95-095 (September 15, 1995) (A county is permitted to collect from a nonindigent inmate housed in the county jail the cost of providing needed medical or dental care to the inmate. However, the county is the party ultimately responsible for paying providers who render medical or dental services to county inmates.).

As a general rule a county may include medical expenses incurred on behalf of an inmate as jailers' fees taxable in the bill of costs. A defendant convicted of a criminal offense is responsible for paying the costs associated with the prosecution. The costs of a criminal case include all costs incident to the arrest and safekeeping of the defendant, including the costs of the jailer. Op. Tenn. Atty. Gen. 03-072 (June 10, 2003).

Inmate Copay

Reference Number: CTAS-1379

Any county may, by resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the county jail administrator to charge an inmate in the county jail a copay amount for any medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider provided to the inmate by the county. A county adopting a copay plan must establish the amount the inmate is required to pay for each service provided. However, an inmate who cannot pay the copay amount established by the plan cannot be denied medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider. T.C.A. § 41-4-115(d).

If an inmate cannot pay the copay amount established by a plan adopted pursuant to T.C.A. § 41-4-115(d), the plan may authorize the jail administrator to deduct the copay amount from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. T.C.A. § 41-4-115(e).

Notwithstanding any other provision of law to the contrary, a plan established pursuant to T.C.A. § 41-4-115(d) may also authorize the jail administrator to seek reimbursement for expenses incurred in providing medical care, treatment, hospitalization or pharmacy services to an inmate incarcerated in the jail from an insurance company, healthcare corporation, TennCare or other source, if the inmate is covered by an insurance policy or TennCare or subscribes to a healthcare corporation or other source for those expenses. T.C.A. § 41-4-115(f). Note: An individual loses eligibility for TennCare upon becoming incarcerated. Accordingly, TennCare may properly deny coverage to an individual who is incarcerated. See Op. Tenn. Atty. Gen. 97-010 (February 4, 1997).

The United States Constitution, on its face, says nothing about medical care due inmates. The right to medical care was inferred by the United States Supreme Court in *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976) and the contours of that right have been shaped by subsequent

case law. Constitutional principles derived from the Eighth Amendment's prohibition of "cruel and unusual punishments" establish the government's obligation to provide medical care for those whom it is punishing by incarceration. *Id.* See also *Helling v. McKinney*, 509 U.S. 25, 32, 113 S.Ct. 2475, 2480, 125 L.Ed.2d 22 (1993); *Marsh v. Butler County*, 268 F.3d 1014 (11th Cir. 2001).

"Although the Supreme Court has held that a state must provide inmates with basic medical care, the Court has not tackled the question whether that care must be provided free of charge." *Reynolds v. Wagner*, 128 F.3d 166, 174 (3d Cir. 1997), citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 n. 7, 103 S.Ct. 2979, 2984 n. 7, 77 L.Ed.2d 605 (1983) ("Nothing we say here affects any right a hospital or government entity may have to recover from a detainee the cost of medical services provided to him."). See also *Englehart v. Dasovick*, 12 F.3d 1102 (8th Cir. 1993) (Table) ("While the state has an obligation to provide medical care to prisoners, the Constitution does not dictate how the cost of that care is to be allocated.") (citations omitted).

There is no general constitutional right to free healthcare. *Reynolds*, 128 F.3d at 173. In *Reynolds*, the Third Circuit Court of Appeals affirmed a district court's ruling that there is nothing unconstitutional about a program that requires inmates with adequate resources to pay a small portion of their medical care. The court rejected the inmates' argument that charging inmates for medical care is *per se* unconstitutional. The court found that if a prisoner is able to pay for medical care, requiring such payment is not "deliberate indifference to serious medical needs." The court noted that "such a requirement simply represents an insistence that the prisoner bear a personal expense that he or she can meet and would be required to meet in the outside world." *Id.* at 174. See also *Roberson v. Bradshaw*, 198 F.3d 645 (8th Cir. 1999) (County's policy of requiring jail inmates to pay for their own medications if they could afford to do so did not violate the Eighth Amendment.).

If an inmate cannot pay, he must be maintained at the county's expense; it cannot deny minimal medical care to poor inmates. If an inmate can pay for his medical care, then the county may require reimbursement. No right described or alluded to in the Constitution is implicated by a decision of the county to seek compensation for its actual, reasonable costs in maintaining an inmate. As he was obliged to pay court costs, he may be obliged to pay his medical costs. Tennessee imprisoned him; it did not adopt him. See *Bihms v. Klevenhagen*, 928 F.Supp. 717, 718 (S.D. Tex. 1996). See also *White v. Correctional Medical Services Inc.*, 94 Fed.Appx. 262, 264 (6th Cir. 2004) ("It is constitutional to charge inmates a small fee for health care where indigent inmates are guaranteed service regardless of ability to pay."); *George v. Smith*, 2005 WL 1812890 (W.D. Wis. 2005).

In *Breakiron v. Neal*, 166 F.Supp.2d 1110, 1114-1115 (N.D. Tex. 2001), the district court found that deducting payments from an inmate's inmate commissary or trust account for medical services rendered does not violate the Due Process Clause of the Fourteenth Amendment. The court noted that states may decide who should pay for the medical care of inmates. *Id.*, citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244-245, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). Accord *Negron v. Gillespie*, 111 P.3d 556, 558-559 (Colo. App. 2005) ("As long as the state meets an inmate's serious medical needs, each state may determine whether a governmental entity or an inmate must pay the cost of medical services provided to the inmate.") (citing cases).

Reimbursement for State Inmate Medical Care

Reference Number: CTAS-1380

The state is liable for expenses incurred from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse, provided that the prisoner is admitted to the hospital. The sheriff of the county in which the state prisoner is incarcerated must file a petition with the criminal court committing the state prisoner to the county jail or workhouse attaching thereto a copy of the hospital bills of costs for the state prisoner. It is the duty of the court committing the state prisoner to the county jail or workhouse to examine bills of costs, and if the costs are proved, the court is required to certify the fact thereon and forward a copy to the judicial cost accountant. Expenses for emergency hospitalization and medical treatment are paid in the same manner as court costs. T.C.A. § 41-4-115(b).

The state is responsible for transportation costs and cost of any guard necessary when a state prisoner is admitted to a hospital or requires follow-up treatment. Such reimbursement is to be made according to the procedures established by T.C.A. § 41-8-106, but shall be in addition to the per diem established in T.C.A. § 41-8-106. T.C.A. § 41-4-115(c).

No claim against the state for the payment of medical expenses shall be paid unless the claim is submitted to the department of correction within six (6) months from the date the services were provided. No claim against the state for the payment of costs incurred in the prosecution and safekeeping of criminal defendants shall be paid unless the claim is submitted to the department of correction within six (6) months from the date of entry of the judgment of conviction. T.C.A. §§ 40-25-144(a) and 41-4-115(g).

If a defendant serving a felony sentence in a local jail develops medical problems that the local jail is not equipped to treat, the court has the authority to transfer the defendant to the Department of Correction. T.C.A. § 40-35-314(e).

Psychiatric Care of Inmates

Reference Number: CTAS-1381

The Eighth Amendment requirement of adequate medical care for a prisoner applies equally to psychiatric care. *McCullough v. Barnes*, 2005 WL 2704878, *8 (M.D. Tenn. 2005), citing *Torraco v. Maloney*, 923 F.2d 231, 234 (1st Cir. 1991); *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).

Inmates shall have access to mental health services as clinically warranted in accordance with protocols established by the health authority that include:

- (a) Screening for mental health problems;
- (b) Referral to outpatient services, including psychiatric care;
- (c) Crisis intervention and management of acute psychiatric episodes;
- (d) Stabilization of the mentally ill and prevention of psychiatric deterioration in the facility;
- (e) Referral and admission to inpatient facilities; and
- (f) Informed consent for treatment. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(12).

A suicide prevention program shall be approved by the health authority and reviewed by the facility administrator. The program must include specific procedures for handling intake, screening, identifying, and continually supervising the suicide-prone inmate. All facility employees responsible for supervising suicide-prone inmates shall be trained annually on program expectations. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(13) and (14).

Involuntary administration of psychotropic medication(s) to inmates shall be authorized by a physician and provided in accordance with policies and procedures approved by the health authority, and in accordance with applicable laws and regulations of the jurisdiction. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(23).

Dental Care of Inmates

Reference Number: CTAS-1382

The requirement that the state furnish healthcare includes necessary dental services. *Grubbs v. Bradley*, 552 F.Supp. 1052, 1123 (D.C. Tenn. 1982). Pursuant to state regulations, dental treatments, not limited to extractions, must be provided when the health of the inmate would otherwise be adversely affected during confinement, as determined by a physician or dentist. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(17).

"[N]ot all claims regarding improper dental care will be constitutionally cognizable. Dental conditions, like other medical conditions, may be of varying severity. The standard for Eighth Amendment violations contemplates 'a condition of urgency' that may result in 'degeneration' or 'extreme pain.'" *Chance v. Armstrong*, 143 F.3d 698, 702 (2nd Cir. 1998). "A cognizable claim regarding inadequate dental care, like one involving medical care, can be based on various factors, such as the pain suffered by the plaintiff, the deterioration of the teeth due to a lack of treatment, and the inability to engage in normal activities." *Goodnow v. Palm*, 264 F.Supp.2d 125, 132 (D. Vt. 2003) (citations omitted). See also *Fields v. Gander*, 734 F.2d 1313, 1314-1315 (8th Cir. 1984) (Inmate's claims that sheriff knew of the pain he was suffering and still refused to provide dental care for him for up to three weeks could support a finding of an Eighth Amendment violation.).

Charging Inmates for Issued Items

Reference Number: CTAS-1383

Any county may, by a resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the county jail a fee, not to exceed the actual cost, for items issued to the inmate upon each new admission to the county jail. T.C.A. § 41-4-142(a).

Additionally, any county may, by a resolution adopted by a two-thirds vote of its county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the jail a nominal fee set by the county legislative body at the time of adoption for the following special

services when provided at the inmate's request:

1. Participation in GED or other scholastic testing for which the administering agency charges a fee for each test administered;
2. Escort by correctional officers to a hospital or other healthcare facility for the purpose of visiting an immediate family member who is a patient at such facility; or
3. Escort by correctional officers for the purpose of visiting a funeral home or church upon the death of an immediate family member.

T.C.A. § 41-4-142(b).

A plan adopted pursuant to T.C.A. § 41-4-142(a) or (b) may authorize the jail administrator to deduct the amount from the inmate's jail trust account or any other account or fund established by or for the benefit of the inmate while incarcerated. Nothing in T.C.A. § 41-4-142 shall be construed as authorizing the jail administrator to deny necessary clothing or hygiene items or to fail to provide the services specified in T.C.A. § 41-4-142(b) based on the inmate's inability to pay such fee or costs. T.C.A. § 41-4-142(c).

"[D]ebiting an inmate's account for costs associated with his incarceration does not deprive him of a protected property interest without due process of law. More specifically, such debits are not 'deprivations' in the traditional sense because an inmate has been provided with a service or good in exchange for the money debited." *Browder v. Ankrom*, 2005 WL 1026045 (W.D. Ky. 2005) (holding that charging of a per diem for room and board is not in violation of an inmate's federally protected constitutional rights). See also *Sellers v. Worholtz*, 86 Fed.Appx. 398 (10th Cir. 2004) (holding prisoner's due process rights were not violated by withdrawing funds from his prison account to pay various fees, and officials did not violate prisoner's Eighth Amendment rights by withdrawing funds from his prison account to pay various fees).

Inmate Marriages

Reference Number: CTAS-2198

Post v. Mohr. Not Reported in F.Supp.2d, 2012 WL 76894 N.D.Ohio,2012. Prisoners have a constitutional right to marry and, therefore, prison regulations that interfere with that right must be reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89-96, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987) (finding a regulation prohibiting inmate marriage unconstitutional); see *Zablocki v. Redhail*, 434 U.S. 374, 385-86, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978) (marriage is fundamental right).

King v. Caruso 542 F.Supp.2d 703 E.D.Mich.,2008. Moreover, in the very case in which the Supreme Court held impermissible a prison regulation effecting an "almost complete ban" on marriage by inmates, *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 2267, 96 L.Ed.2d 64 (1987), the Court reiterated:

- [W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if "prison administrators ... and not the courts, [are] to make the difficult judgments concerning institutional operations."
- *Id.* 107 S.Ct. at 2261, quoting *713 *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 128, 97 S.Ct. 2532, 2539, 53 L.Ed.2d 629 (1977); see also *id.* 107 S.Ct. at 2267. The Court upheld in *Turner* a Missouri regulation restricting inmate-to-inmate correspondence, 107 S.Ct. at 2263-64, and stated that an inmate's marriage is indeed "subject to substantial restrictions as a result of incarceration," *id.* at 2265, although the restrictions imposed must be "reasonably related to legitimate penological objectives," *id.* at 2267, including "legitimate security concerns." *Id.* at 2266.
- The D.C. Circuit noted that while *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), held impermissible a prison regulation effecting an "almost complete ban" on marriage by inmates,^{FN4} the Supreme Court nonetheless reiterated:
 - [W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if "prison administrators ... and not the courts, [are] to make the difficult judgments concerning institutional operations."

Allman v. Motley Not Reported in S.W.3d, 2007 WL 1723373 Ky.App.,2007. As stated in *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987), "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Thus, "legitimate security concerns may require placing reasonable restrictions upon an inmate's right to marry, and may justify requiring approval of the superintendent." *Id.*, 482 U.S. at 97, 107 S.Ct. at 2266. The court indicated that a reasonable restriction might be one such as that provided by

28 CFR § 551.10 (1986), which the court described as generally permitting inmate marriage unless the “warden finds that it presents a threat to security or order of institution, or to public safety.” *Id.* 482 U.S. at 98, 107 S.Ct. at 2266.

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