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Employing Certified Jailers: Benefits to Operating Temporary Holding Facilities

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ABSTRACT


The Deer Park Police Department and several other agencies across the State of Texas currently operate temporary holding facilities for adult male and female prisoners who are in custody for class ‘C’ misdemeanor charges and also for County prisoners waiting to be transferred. Should these temporary holding facilities be operated by a police officer  or by a certified civilian jailer? This study clearly demonstrates that a need exists to develop standardized operating procedures for all temporary holding facilities which should include a requirement to staff the facilities with a certified civilian jailer. The research presented includes several opinions on this topic. Moreover, the author has extensive first-hand knowledge and is currently working in a position that requires the supervision of the Deer Park temporary holding facility. Additional research presented demonstrates the inconsistent methods of operation of these facilities among police departments around the state. The State of Texas does not currently have a standardized set of rules and regulations governing the operation of temporary facilities. The State has also neglected to impose regulations setting minimum qualifications of the individuals operating these facilities. Temporary holding facilities are in fact jails. They have been given a different name than a jail thus they now fall into a “gray area” and the quality of the facility and the training of the individuals who staff them are left to the discretion of each municipality.

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INTRODUCTION

Is it beneficial for medium size police departments to employ certified civilian jailers, to operate temporary holding facilities?

The term “medium” municipal police department is difficult to define. This study will define “medium” as an agency that employs less than one hundred commissioned police officers but more than twenty. The relevance of each agency to this study depends on their use of a temporary holding facility for detainees. A temporary holding facility is a municipal lock-up, which does not meet the state requirements to be classified as a jail or a prison.

Texas law does not regulate the daily operation of a temporary holding facility. It is left up to each municipality to provide and train staff members to supervise prisoners in these facilities. Larger Texas cities such as Houston, Dallas, and San Antonio employ civilian jailers due to the large volume of prisoners they handle. Some smaller agencies have hired civilian jailers who are certified by the Texas Commission on Law Enforcement Officers Standards and Education. These individuals have received specialized training in jail operations and prisoner management. The primary responsibility of a certified jailer is the care and security of prisoners. Other agencies have decided to decline on using properly trained personnel and choose to use police officers to operate these facilities in addition to their law enforcement duties. A third grouping of municipalities has eliminated the need to operate temporary holding facilities completely by working out agreements with their local Sheriff’s office to house all municipal prisoners.

Problems have developed over the years that suggest that police officers should not be used to supervise detainees in temporary holding facilities. Police officers in most cases have a lack of training in jail operations thus they feel that this type of assignment is not in their job description. This sentiment has had a negative effect on morale and on the quality of care given to detainees.

This study will attempt to identify the advantages and disadvantages of using civilian jailers in lieu of police officers to operate temporary holding facilities. In exploring this topic a review of minimum acceptable standards will be addressed along with possible inconsistent jail operations from one municipality to another. Is there a need for State intervention in standardized operating procedures in medium sized police agencies which operate temporary holding facilities? This question will have to be answered before the issue of using police officers to operate them can be resolved.

The research contained in this report includes a survey from police supervisors from several agencies in Texas. Additional information was obtained from journal articles, text, and first-hand knowledge of the subject by the author who supervises a temporary holding facility daily. The end result of this research will give police and other city officials the information needed to make an educated decision on this topic. The problem confronting licensing authorities, lawmakers, and the public is a need to address the issue of police officers operating temporary-holding facilities in lieu of properly trained professional jailers. Medium-sized cities with limited budgets need to examine the potential liability of ignoring this issue and seek alternative ways to fund civilian jailers. One potential alternative is an idea adopted by the State of California. The California program allows municipal holding facilities to house state prisoners in return

for compensation from the state. This innovative plan has proven to be a valuable source of revenue for medium and smaller agencies that otherwise could not afford to hire full-time jailers.

The governing bodies of the State of Texas have overlooked or avoided the need to develop a set of standards to produce consistency in this area of the criminal justice system. The events of September 11, 2001 have created an even greater cry from the public to put more police officers on the street. Police agencies are always looking for ways to increase community relations, lower response times, and reduce crime. If these are truly some of the goals of police departments then why are police officers off the streets, inside of police departments operating temporary holding facilities?

Review of Literature

The research data located on this topic exists in limited quantity and the dates of the literature are best described as sporadic. Some of the earliest information located came from The California Board of Corrections, which was published in 1980. The California Board of Corrections addressed the issue of temporary holding and short-term confinement facilities. The first task they achieved was to define “Temporary Holding Facility and Short Term Confinement Facilities.” Then they completed a comprehensive set of guidelines, which established the institution’s and their minimum operating standards (CBC). The California model will be referred to as an example due to the fact that Texas does not have any such guidelines in place. It was not until 1975 that the 64th Texas legislature passed House Bill 272 which created the Texas Commission on Jail Standards (del Carmen, 1990). This Commission, according to del Carmen, gave a specific definition for a jail, more specifically a county jail. The Texas Commission on

Jail Standards defined a jail as a facility which holds suspects waiting for trial if they are given a “no bond” by the presiding judge or if they cannot afford to post a bond. In the second part of their definition they advised that such institutions would be equipped to house convicted misdemeanor offenders and non-serious felons (del Carmen, 1990). The Commission’s definitions could easily describe the function of Temporary Holding Facilities, but their concern and authority was limited to county facilities. The California definitions were more specifically aimed at municipal facilities which stated that a Temporary Holding Facility is a detention facility which can keep people up to nine hours and a short term facility can keep them for up to twenty-four hours. (CBC, 1980). The Ohio Department of Rehabilitation and Correction has also set down guidelines which define Temporary Holding Facilities and also establish minimum standards for their operation. In Ohio a Temporary Holding Facility is defined as “. . . a local facility that physically detains arrestees for a maximum of 6 hours for processing and/or awaiting transportation” (Ohio Department of Rehabilitation and Correction, 2002, p.1). The Accreditation process defines a holding facility as a facility which houses prisoners for up to seventy-two hours. (Commission on Accreditation, 1998). The minimum standards imposed by Ohio include twenty-six written guidelines for the operation of a Temporary Holding Facility. The Temporary Holding Facilities are subject to annual inspections by the Regional jail inspector. Training issues specific to jail duties are addressed in several areas of the guidelines. The guidelines do however fail to specify the specific title of the staff whether they are police officers or civilian jailers, in any event they must receive specialized training in jail operations. The relevance in comparing these definitions is that a typical Temporary Holding Facility operated by a Texas municipality performs

similar tasks as a county jail and conforms to the definition as set forth by the Texas Commission on Jail Standards. The data collected from Ohio and California demonstrates that in both states a temporary holding facility is just that, temporary. They do not allow the overnight detainment of prisoners in these facilities they must be transferred to a regional jail. Texas municipalities routinely incarcerate prisoners held on municipal commitments, pre-trial status, and violators who face “fine only” punishments. The length of time spent in custody ranges from a few hours to several weeks. The length of the sentence should be of special concern to administrators operating holding facilities. The Deer Park Police temporary holding facility is managed by police officers and consumes many man-hours. The daily duties are usually assumed by the patrol Sergeant. The patrol division currently functions with the use of three eight hour shifts supervised by two sergeants on each shift and occasionally an “acting supervisor,” this translates into three different Sergeants and various patrolmen operating the Temporary Holding Facility in a twenty-four hour period. More specifically several different staff members who have had limited formal training in jail operations, prisoner management, or no training at all!

In a telephone interview with Terry Julian, Executive Director of the Texas Commission on Jail Standards (T. Julian, telephone interview, 02/26/03), he advised that as of February 2003 the operation of and subsequently the determination of minimum standards for a temporary holding facility is left up to the discretion of each city. Julian also expressed his concern that this is a “gray area” in Texas law enforcement. The impact of improperly maintained facilities operated by poorly trained staff has the potential for catastrophic civil litigation. Julian also advised that poor or inadequate

supervision has lead to increased prisoner on prisoner violence and facilitates the opportunity for prisoner suicides (T. Julian, telephone interview, 02/26/03)

Several problems exist with the daily operation of temporary holding facilities. The facilitators are neither required to maintain the same minimum standards that are imposed on county jails nor subjected to periodic inspections by a regulatory agency. The most problematic area in municipal operated facilities is the lack of properly trained personnel. The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is authorized by State Law to license and regulate the training of both peace officers and jailers (Dozier, 2000, ¶ 1). TCLEOSE officials have determined that minimum education and basic standards are similar for both licenses. They have also provided for minimal cross training on issues that effect both positions. The requirements of both professions then move drastically in opposite directions. The training for peace officers is directed towards law enforcement and maintaining order in a free society. The training for jailers is focused on providing a safe, sanitary, and orderly environment for individuals who are incarcerated. A comparison of required intermediate core courses, in addition to prescribed lengths of service and type of education, is an excellent example of the differences in peace officers and jailers training. To achieve this level peace officers are mandated to take courses in Child Abuse Prevention and Investigation, Crime Scene Investigation, Use of Force, Asset Forfeiture, and Racial Profiling. A jailer is required to complete classes in Suicide Detection and Prevention in Jails, Inmate Rights and Privileges, Interpersonal Communications in the Correctional Setting, and Use of Force in a Jail Setting. Both professions are required to complete a course on Spanish for Law Enforcement (TCLEOSE, 2002).

The International Association of Chiefs of Police reported the results of an extensive survey in which data was sent out to over 14,000 agencies across the United States including Alaska, Hawaii, and Puerto Rico. The data was collected to determine physical characteristics, procedural standards, administrative methods, and managerial policies of municipal agencies which operate Temporary Detention Facilities (IACP, 1979). Several alarming discrepancies were uncovered as a result of this survey; formal training was severely lacking, no nationwide standards existed for the operation of adequate, safe, and humane environments. These facilities also lacked insufficient means to handle juveniles and detainees with unique problems (IACP, 1979). In communities with a population of less than 20,000, the detainees were immediately transferred to larger facilities such as a county jail. The report recommended that training should be imposed on the individuals who operate temporary holding facilities and at a minimum the criteria should include: “. . . security procedures, supervision of arrestees, reporting, writing and preparation of statistical information, significant legal issues, arrestee rules and regulations, grievance or disciplinary procedures, rights and responsibilities of arrestees, emergency procedures and violent disturbances, first-aid, crisis intervention, detention procedures for women and juveniles, special needs of the mentally disturbed and handicapped” (IACP, 1979, p. 26). The author has also noticed an increasing need to have an employee present that is fluent in Spanish. Spanish-speaking prisoners are unable to respond to English-spoken commands in interviews, intoxilyzer operation, and the explanation of the associated paperwork. Judges cannot properly magistrate them and the medical and mental health questionnaires are totally useless. This is an important part of the criminal justice system that needs to be reworked in the State of Texas.

Methodology

Is it beneficial for medium-size police departments to employ certified civilian jailers to operate temporary holding facilities?

The correct answer to the proposed question is: it depends! According to the data presented on this topic combined with personal experiences of the author. It depends on a number of factors. The manpower of the agency operating the facility, the financial resources to hire additional personnel (i.e. civilian jailers), the amount of prisoners held daily, and cumulatively on an annual basis. The use of properly-trained state-certified civilian jailers is very desirable and should be used in lieu of police officers performing this task. The quality of supervision and care given to prisoners would improve and the chances of civil litigation should decrease. The individuals held in these facilities include transient county prisoners and habitual violators but they also include average hardworking citizens who have not paid their traffic tickets. In Deer Park the overriding theme of the Police Department is Community-Oriented Policing. Having a positive influence on local prisoners should help decrease recidivism and increase the rapport with citizens. In other words we are practicing community-oriented policing techniques with every Deer Park Citizen that is required to briefly stay in our facility. Improving the quality of the services provided would have a positive effect on the stakeholders of a temporary holding facility.

The current information presented by the questionnaire presents a valid opinion from first-line supervisors who are current practitioners on this subject along with ideas for the practical application of temporary holding facility staffing practices. The personal response from authors and fellow officers was positive towards the use of civilians in

municipal holding facilities. The information presented should assist police administrators in making the appropriate decision on temporary holding facility use and or the staffing of their facilities.

Findings

The research on this topic was limited and varied from source to source. The single consistent factor in all of the data presented is that it is favorable to have civilian jailers operating temporary holding facilities when a medium size police department operates such facilities. The dates of the research contained in this paper are very important to the relevance of actions taken by legislative bodies towards the improvement of care given to detainees. Court decisions around 1960 and 1970 brought about many changes in the way of “business as usual” in detention facilities. Up until these dates prisoners were assumed to have given up their rights when they were incarcerated. Several court decisions, civil litigation and the civil rights movement drastically changed this philosophy (Embert, 1986). The relevance to Temporary Holding Facilities is substantial. The staff members who operate and supervise these facilities need to be properly trained in at least four different types of law: Criminal (Penal) law, Civil Law, Correctional Law, and Constitutional Law (Embert, 1986). The average police officer placed in the position of supervising prisoners in a Temporary Holding Facility has received most of his training only in Criminal Law. Police officers used in the capacity of “jailer” have not received additional training over the First, Fourth, Eighth, Tenth, and Fourteenth Amendments to the Constitution. The violation of any of these rights opens the individual officer up to a potential lawsuit which could result in punitive damages paid to a prisoner (Embert, 1986). The issue of vicarious liability would also tie the

entire chain of command to a tort action based on inadequately trained employees being placed in these positions. Training for police officers in jail operations is poor to non-existent. Police departments typically write a catch-all policy and implement it without any formal training. Common sense and basic human rights is left up to the norms the Police Officer was raised with along with the general sentiments expressed by peer pressure towards each prisoner (Das, 2001). “It is a fact that jail personnel and their responsible governmental entities are going to be sued. The goal is to prevent successful litigation, or at a minimum, to reduce the impact of successful litigation” (Embert, 1986, p. 77). Prisoner specific issues are compounded by the large numbers of prisoners handled by the criminal justice system each year. Local jails handle more than 10 million arrestees annually. Sheriff’s departments administer approximately seventy-five percent of these prisoners. The public response to prison management is usually unsympathetic towards complaints of poor conditions and overcrowding (Parrish, 2000). In a county jail the operational standards are closely monitored by local officials and state regulatory agencies. Municipalities operate more on an inner departmental set of rules and jail standards with a low accountability rate. Temporary holding facilities face several challenges in their daily operations some of the most obvious ones are sanitation, health care, mixing minor and major offenders together, and inadequate supervision. Common sense dictates that the task of cleaning a temporary holding facility should at a minimum be conducted daily and optimally between every prisoner use. The Deer Park holding facility consists of six individual cells. Four cells are designated as adult male only. Among these four, one is used as a detoxification cell, another cell is being used as storage. The two remaining cells are separated by sight and sound and are used to house

female prisoners. The sanitary condition of the jail area is very poor. In the past eleven years the author has observed that the cells are cleaned and sanitized only when trustees are used. The cleaning staff empties the trash can and occasionally sweeps in the booking area. In conversations with officers from other municipalities the conditions are similar.

Incarcerating offenders has always proven to be a difficult task. One of the greatest challenges with housing over crowded jails is the quality of health care and preventing the spread of communicable diseases. Prisoners are more sick now than in any other time in history. Aids, HIV, hepatitis, and tuberculosis are much more prevalent among prisoners than in the general population (Parrish, 2000). The confined areas and grouping of inmates increases exposure and serves as an excellent breeding ground for disease catching. The unsuspecting Police Officer is often exposed to communicable diseases without ever knowing it. The author was processing a prisoner one day when another officer pulled him aside and advised to be careful that the prisoner being fingerprinted was HIV-positive and possibly had tuberculosis. The only reason that that officer knew this information was that he served as the prisoner's parole officer prior to working for the Deer Park Police Department.

In a Temporary holding facility such as The Deer Park Police Department, medical screening consists of a question-and-answer session between the prisoner and a police officer. The police officer is not trained to medically diagnose mental or physical ailments; he or she merely types in the answers provided by the prisoner. The officer must rely on the honesty of the suspect in custody to complete the screening. The facilities at the Deer Park Police temporary holding area was built many years prior to the passing of the (A.D.A.). Most temporary holding facilities that the author has toured are

also in violation of the (A.D.A). The author has observed wheelchair-bound AIDS patients who could not maneuver their wheelchairs into the cell area thus the police officers present were obligated to assist the prisoner in and out of the cells. This sporadic assistance of prisoners by personnel has exposed unsuspecting officers to direct contact with infected prisoners without preparing or equipping them to protect themselves or their families.

In an article written by Michele Deitch, she observed that in addition to officers being exposed to infected prisoners, other prisoners are often exposed to infectious diseases (Deitch, 2001). Deitch proposed a different approach to the temporary holding facility issues. She advocates that police officers have very limited arrest discretion when it pertains to class 'C' arrests made for "fine only" offenses. An example cited was the case of *Atwater V. City of Lago Vista*. Gail Atwater was arrested for not wearing her seat belt. The case eventually made it all the way up to the Supreme Court. The High Court was asked whether the Fourth Amendment to the Constitution limits the use of custodial arrests for fine-only traffic offenses. In a telephone interview with Deitch she explained to the author that the concept of using Temporary Holding facilities could be eliminated, and the laws revised to exclude "fine only" offences such as class 'C' arrests. All arrest able offenses would then be class 'B' misdemeanors and above and everyone arrested would go directly to a County Jail (M. Deitch, telephone interview, 02/25/02). This would remove the municipalities from the "jail" operations process. Deitch further advised that the Supreme Court voted 5-4 against Atwater and that for now officers and municipalities would have to continue to operate temporary holding facilities as long as officers are making fine-only arrests. According to the legislative updates issued by the

Department of public Safety, on September 1, 2003 the Texas Legislature effectively increased the time spent in temporary facilities by reducing in half the amount of daily credit given to municipal violators from \$100.00 dollars per day to \$50.00 per day. The result of this decision instantly doubled the potential time spent by prisoners in temporary holding facilities and also the time spent taking care of and supervising them.

Deitch and the authors cited in her article present an interesting solution for the issue of operating temporary holding facilities: eliminate them and the authority of police officers to make fine-only arrests. Another concept that is opposite of this theory is the practice of making temporary holding facilities into return-to-custody facilities increasing the amount of prisoners in temporary holding facilities. The State of California has a program known as return to custody. In 1987 California Senate bill #1591 was passed which allowed the Corrections Department to enter into agreement with counties and municipalities to house parole violators and state prisoners. This was a win-win proposition for both parties involved. The overcrowded state prisons were brought back into compliance with maximum number of inmates per prison, the county jails were reimbursed for the state prisoners that they were already housing and the municipalities found another source of revenue. The municipalities targeted for this project ranged in population from 6,600 to 20,000 but no limits were placed on a city's size. Earnings have been reported to be in the range of \$200,000 to \$750,000 with proceeds split as 40 percent to the police departments and 60 percent to the host cities general fund. (Garzelli, 1991). The author was unable to locate follow-up information regarding the effectiveness of return-to-custody facilities thus Bert Garzelli was contacted and interviewed by telephone. Garzelli, currently the Chief of The Lindsay California Police

Department, advised that his city has never operated such a facility but that they are still being used in many California cities with a mixed success ratio (B. Garzelli, telephone interview, 09/18/03). He advised that they have proven to be successful in generating revenue if managed correctly. The most successful cities have hired retired correction officials to run them and they are operated separately from the police department. Conversely the programs which have failed were operated by police officers under the direction of the chiefs. The negative responses have come from citizens who do not want state prisoners kept in their quiet town. The most successful program is in the city of Folsom. Folsom sounds comparable to Huntsville, Texas, and has one of the state's largest prisons that supports the city's economy. The citizens accept having prisons in their backyards and are not bothered by having these facilities added. The return-to-custody facility, now called Community Correction Centers, generates a substantial income for the city and provides additional employment opportunities for retired corrections officers. The study of return-to-custody facilities provides a viable source of revenue for municipalities that desire using civil jailers in lieu of police officers to operate temporary holding facilities and do not have the additional funds to hire the jailers. The concept has proven successful in California but still has not been proposed in Texas.

The Commission on Accreditation for Law Enforcement Agencies, Inc. has developed the standards in the Manual of the Law Enforcement Agency Accreditation Program (Commission on Accreditation, 1998). This is a prestigious recognition obtained by a law enforcement agency once they have met the prescribed criteria. Accreditation for now is a voluntary effort by law enforcement administrators who have a desire to

standardize the “industry” of operating a police department. The accreditation process includes conformance to Chapter 72 of the Accreditation manual which defines the minimum conditions acceptable in the daily operation of a temporary facility. The Accreditation process does not specifically call for civilian jailers but it does state that “Types and levels of training should vary with the nature of assignments and responsibilities” and that personnel should receive training on the operations of the holding facilities (Accreditation, 1999, p.72-7). The Accreditation process has recognized a need to place properly trained personnel in charge of prisoner care. Most police officers are not in compliance with this section and should be properly trained in the operation of a temporary holding facility.

Discussions/Conclusions



Is it beneficial for medium-sized police departments to employ certified jailers to operate temporary holding facilities? Even after exploring the limited information on this topic the answer to this question is still: it depends! The overriding sentiments of the data and the author’s first hand knowledge of the subject suggest that, indeed, certified jailers should be used in lieu of police officers to operate temporary holding facilities. If a municipality has the financial support of the governing bodies they should place properly trained job-specific personnel in this position. If they do not have the resources to hire additional personnel then the police officers performing this task should be properly trained. In conversations with Chief Garzelli and Julian both conceded that problems exist even with using professional jailers. Jailers have abused prisoners mentally and sexually, they have brought in drugs for them, and the list goes on. The liability switches from the organization to the wrongful actions of the employee if the agency has done all

it can do to prevent misconduct and provide a safe sanitary facility for the prisoners held. Police officers who are forced into the role of prison guard will often serve as poor models for prisoners and increase the amount of dislike towards the entire criminal justice system. Further research should be conducted to determine the effect that using police officers has on had on supervising temporary holding facilities verses using civilian guards. It should also be noted that prisoners who serve as trustees at the Deer Park holding are assigned to the shop to work under the supervision of the civilian mechanics have on several occasions returned to sit and drink coffee with the shop personnel whom they have developed a bond with. They have a need to return and demonstrate that they have made on the outside and they want to share this with the individuals whom they feel have helped them to achieve this goal. To the best of the author's knowledge no prisoners have returned to visit with a police officer that supervised them. The knowledge gained from this research has brought to light the obvious need for a minimum set of standards for the uniform operation of temporary holding facilities in Texas municipalities. The most obvious problem is the use of improperly trained staff members in these positions. The State governing authorities should bear the responsibility of establishing a regulatory agency that has the authority to monitor and enforce minimum standards. Texas already has an agency which determines the appropriate training needs of jailers. Temporary holding facilities could also be placed under the same authority as county jails.



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