

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 670. CITY AND COUNTY DETENTION FACILITY STANDARDS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1, General Provisions
310:670-1-2 [AMENDED]
Subchapter 5, Standards for Detention Facilities
310:670-5-5 [AMENDED]
310:670-5-11 [AMENDED]

SUMMARY:

310:670-1-2. Definitions - Amendment to reflect legislative changes which clarifies the definition of barrack-style.

310:670-5-5. Amendment replaces dormitory-style for barrack-style as reflected in the recent legislative change.

310:670-5-11. Amendment replaces dormitory-style for barrack-style as reflected in the recent legislative change.

310:670-5-11. Amendment replaces medium-security to reflect wording in statute for minimum-security.

AUTHORITY:

Commissioner of Health; Title 63 O.S. § 1-104, Title 57 O.S. § 57, Title 74 O.S. § 192-E.

COMMENT PERIOD:

October 16, 2023 through the close of the Department's normal business hours, 5 PM, on November 17, 2023. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on November 17, 2023 submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on November 17, 2023 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is November 20, 2023 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 17, 2023, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 670. CITY AND COUNTY DETENTION FACILITY STANDARDS**

1. DESCRIPTION:

The purpose of this proposed rule is to reflect legislative changes which clarify the definition of barrack-style.

310:670-1-2. Definitions - Amendment to reflect legislative changes which clarifies the definition of barrack-style.

310:670-5-2. Amendment clarifies that three counts are to be conducted daily.

310:670-5-5. Amendment replaces dormitory-style for barrack-style as reflected in the recent legislative change.

310:670-5-11. Amendment replaces dormitory-style for barrack-style as reflected in the recent legislative change.

310:670-5-11. Amendment replaces medium-security to reflect wording in statute for minimum-security.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

This proposed rule impacts persons confined in any city or county jail, adult lockup or adult detention facility. It may effect city or county jail, adult lockup or adult detention facility operators.

The President of the Sheriff Association agreed definition of barrack in SB247 would replace the word dormitory.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:

There are no expected immediate health outcomes affiliated with adoption of rule changes. Persons benefiting would be person confined in any city or county jail, adult lockup or adult detention facility.

4. ECONOMIC IMPACT, COST OF COMPLIANCE, AND FEE CHANGES: COST OF COMPLIANCE AND FEE CHANGES:

There are no fee changes affiliated with the proposed rule to the department or stakeholders.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

There are no immediate benefits of implementation and costs associated with implementation are limited to administrative hours, time and labor of the department.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

There is no known adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

8. **EFFORTS TO MINIMIZE COSTS OF THE RULE:**

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

No effect on public health is projected due to removal of unnecessary verbiage, wording and ambiguous words.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

There are no detrimental effects on public health and safety without adoption.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 11, 2023..

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 670. CITY AND COUNTY DETENTION FACILITY STANDARDS**

SUBCHAPTER 1. GENERAL PROVISIONS

310:670-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ACA" means American Correctional Association.

"Available" means that the subject individual is either on site or on the premises.

"Barrack-style" means a single designated space within a city or county jail facility for the purpose of housing three or more inmates.[57 O.S. § 57(F)]

"Bodily search" means any invasive examination by hand of an inmate's person or clothing. Bodily searches do not include "pat-downs."

"Central control" means the central point within the facility where security activities are monitored and controlled.

"Contraband" means anything not authorized to be in an inmate's possession.

"Dayroom" means space for activities that is situated immediately adjacent to the inmates' sleeping area and separated from the sleeping area by a wall.

"Department" means Oklahoma State Department of Health.

"Detention facility" means a facility that may hold a person for an indefinite period of time.

"Detention Officer" means a person whose training, education and/or experience specifically qualifies him or her to perform the duties indicated in the job description and the jail standards, or a person who holds a certification accorded pursuant to 70 O.S. Section 3311. The individual performing the duties must be trained in appropriate laws, codes, standards, policies and procedures.

"Direct contact with inmates" means contact between Detention Officers and inmates in inmate living areas.

"Direct supervision" means the Detention Officer is in direct contact with inmates and is in a position to constantly monitor behaviors and interact with inmates.

"Emergency care" means *medical or surgical care necessary to treat the sudden onset of a potentially life-or limb-threatening condition or symptom* [57 O.S. § 38.3(A)(1)].

"Facility administrator" means sheriff, police chief, city manager, private contractor or a designee thereof charged with maintaining and operating a lockup facility, or detention facility.

"Grievance" means a circumstance or action considered unjust.

"Holding facility" means a facility that shall hold *persons under arrest who are charged with a crime* no longer than twelve (12) hours [74 O.S. § 192(B)].

"Hot meal" means a measure of food served and eaten at one sitting prepared in accordance with and served at a palatable temperature range of 110° - 120° F. (43.3°- 48.8° C.).

"Indigent inmate" means an inmate who has a total receipt of or a balance of less than \$15.00 from the first day through the last of the preceding month.

"Inmate" means any individual, whether in pretrial, sentenced or un-sentenced status who is confined in a detention facility.

"Juvenile" means a person who is subject solely to the jurisdiction of a juvenile court or who is subject to the provisions of Title 10A O.S. § 2-5-205 or 10A O.S. § 2-5-206 (relating to classification as a youthful offender as defined at 10A O.S. § 2-5-202).

"Last locked/secure door" means the last secure barrier between staff and the inmate.

"Life endangering situations" means a suicide attempt, or obvious serious injury or illness, which in the evaluation of the staff requires an immediate response.

"Life threatening" means a situation in which life saving measures are taken.

"Living area" means those areas of a facility utilized for the day-to-day housing and activities of inmates. These areas do not include reception and release areas and special use cells such as sobering, safety, and holding or staging cells normally located in receiving areas.

"Lockup facility" means a facility that may hold a person no longer than ten (10) days. It is usually operated by a town or city for the temporary detention of persons awaiting arraignment. Persons who need to be detained longer than ten (10) days shall be transferred to a detention facility.

"New construction" means a facility with final plans approved after January 1, 1992.

"Non-secure areas" means those areas where a youth or juvenile is in the custody of law enforcement and may not be able to leave or depart from the presence of law enforcement, yet the youth or juvenile is not detained in a facility which limits movement.

"On site" means a Detention Officer being physically present within the detention facility.

"On the premises" means a Detention Officer being physically present within the structure incorporating the detention facility, or within a building or structure sharing the same realty or located on realty that is contiguous to the realty upon which the structure incorporating the detention facility is located, provided that such remote building or structure is not located farther than 500 feet from the detention facility.

"Pat-down" means a noninvasive search of an inmate by hand performed by lightly skimming the exterior surface of the clothing covering the legs and torso.

"Physician or other licensed medical personnel" means a psychiatrist, medical doctor, osteopathic physician, physician's assistant, registered nurse, licensed practical nurse, emergency medical technician at the paramedic level or clinical nurse specialist [57 O.S. § 4.1(3)].

"Sensitive functions and procedures" means any bodily search or the visual supervision of any activity requiring an inmate to partially or fully disrobe.

"Sight check" means when a Detention Officer physically observes an inmate.

"Sight contact" means clear visibility within close proximity.

"Sound contact" means direct oral communication.

"Substantial remodeling" means the cost to repair/replace is at least fifty (50) percent of the cost to replace the facility.

"Sustained contact" means sight or sound contact that is not brief and inadvertent.

SUBCHAPTER 5. STANDARDS FOR DETENTION FACILITIES

310:670-5-5. Classification and segregation

The facility administrator shall develop and implement written policies and procedures for the classification and segregation of inmates. The classification plan shall ensure the safety of inmates and staff. The following criteria shall ensure an adequate classification and reclassification system.

- (1) Inmates of opposite sex shall be housed in separated living areas. Separation shall be by substantial architectural arrangements which permit no sustained sight contact. Housing of inmates with mixed gender identification will be administered in a manner to maximize inmate safety.
- (2) Juvenile offenders.
 - (A) If detention of a juvenile is authorized, such juveniles shall be housed completely separate from adults without sustained sight and sound contact. Inadvertent contact with incarcerated adults outside of jail living areas not dedicated for use by juvenile offenders should be minimized.
 - (B) A juvenile may be held for up to six (6) hours for the purpose of identification, investigation, processing, release to parent(s), transfer to court, or transfer to juvenile facility following the initial custody.
 - (C) A juvenile criminal-type offender may be securely detained in an adult jail or lockup for up to six hours immediately before or immediately after a court appearance, provided sight and sound separation is maintained. This period may be extended to twenty-four hours (excluding weekends and holidays) where the jurisdiction is outside the metropolitan statistical area where:

- (i) state law requires an initial court appearance within twenty-four (24) hours after being taken into custody;
 - (ii) there is no acceptable alternative placement; and
 - (iii) the jail has been determined by the Department to provide for sight and sound separation.
- (3) Inmates considered to be a threat to other inmates or staff shall be housed separately from other inmates for the following reasons:
- (A) (i) Inmate's past criminal history;
 - (B) (ii) The nature and severity of the charges pending against the inmate;
 - (C) (iii) Inmate's behavior while in the facility; and
 - (D) (iv) Other relevant reasons as directed by the administrator.
- (4) Inmates may be double-celled or confined to ~~dormitory-style~~ barrack-style housing if the floor space meets the square footage requirements. These inmates shall be afforded the same living conditions and privileges as those occupying the general population. Any exception regarding conditions and privileges shall be defined by the administrator.
- (5) Inmates who are intoxicated or under the influence of a controlled substance shall be housed separately from other inmates until such time as the medical authority or the detention facility administrator determines their suitability for placement into general population or other appropriate housing.
- (6) Inmates who appear to have a significant medical or psychiatric problem may be separated from other inmates.
- (7) Unsentenced inmates shall be separated from sentenced inmates, to the extent possible, and shall be permitted whatever confinement is least restrictive unless inmate behavior or other security considerations dictate otherwise.
- (8) Classification and segregation shall not be done solely on the basis of race, color, creed or national origin.

310:670-5-11. Physical plant

(a) Existing facilities.

- (1) The reception and release area shall be located inside the security perimeter, but outside the inmate living area. There shall be a secure weapons storage area outside of the custody perimeter.
- (2) All cells and living areas shall have at least forty (40) square feet of floor space for the initial inmate and at least twenty (20) square feet of floor space for each additional inmate occupying the same cell. Double-celling of inmates is permitted if there is at least sixty (60) square feet of floor space for two (2) persons.
- (3) The facility shall have at least one (1) special purpose cell to provide for the temporary detention of inmates under the influence of alcohol or dangerous substances or for persons who are uncontrollably violent or self-destructive. These cells shall be designed to prevent injury.
- (4) The housing and activity areas shall provide, at least the following:
 - (A) Lighting of at least twenty (20) foot candles;
 - (B) One (1) toilet and one (1) washbasin, with hot and cold running water, in every cell or ~~dormitory~~ barrack at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) inmates; and
 - (C) A shower with non-skid floors and with hot and cold running water, at a ratio of at least one (1) shower to twenty (20) inmates in the housing areas.
- (5) There shall be sufficient floor drains to ensure a sanitary facility.
- (6) There shall be designated and marked emergency evacuation exits that comply with the requirements of the Oklahoma State Fire Marshal and which permit prompt evacuation of inmates and staff in an emergency.
- (7) A county may provide a ~~dormitory-style~~ barrack-style detention facility to accommodate ~~up to medium-security~~ minimum-security inmates. It shall be equipped with washbasins, toilets and

showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) inmates. A ~~dermitory-style~~ barrack-style detention facility shall meet all requirements for a detention facility.

(b) **New facilities and substantial remodeling of facilities (after January 1, 1992).** Plans for the construction of a new facility or the substantial remodeling of an existing facility shall be submitted to the Department for review and approval. Detention facilities are encouraged to submit plans to the Department for any re-modeling or repair that does not meet the substantial remodeling threshold to ensure standards are met.

(1) A new detention facility shall be geographically accessible to criminal justice and community agencies.

(2) The reception and release area shall be located inside the security perimeter but outside inmate living area. The reception and release area shall have the following components:

- (A) Sally port;
- (B) Secure weapons storage, outside the detention facility custody perimeter;
- (C) Temporary holding rooms with adequate seating for its rated capacity, toilets and washbasins;
- (D) Booking area;
- (E) Medical examination room;
- (F) Shower facilities;
- (G) Secure area for inmate personal property storage;
- (H) Telephone access;
- (I) Interview room; and
- (J) General administration space.

(3) Cells shall be constructed and arranged to allow direct natural light into each area where feasible.

(4) Windows installed after January 1, 2018, shall conform to ACA standards as adopted in 2017.

(5) All areas shall provide for at least twenty (20) foot candles of light.

(6) Each cell and detention room shall have at least forty (40) square feet of floor space for the initial inmate, and at least twenty (20) square feet of floor space for each additional inmate occupying the same cell. Double-celling is permitted if there is at least sixty (60) square feet of floor space for two (2) persons. Each room or cell shall have:

- (A) One (1) toilet and one (1) washbasin with hot and cold running water, for every single or double occupancy cell or ~~dermitory~~ barrack at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) inmates.
- (B) Bunks and storage as indicated by square feet.

(7) A county may provide a ~~dermitory-style~~ barrack-style detention facility to accommodate minimum security inmates. A ~~dermitory-style~~ barrack-style detention facility shall be equipped with washbasins, toilets and showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) inmates. A ~~dermitory-style~~ barrack-style detention facility shall meet all requirements for detention facilities.

(8) There shall be a dayroom area for each living unit containing at least thirty-five (35) square feet of floor space per inmate for the maximum number of inmates who use the dayroom at one time. It shall be separate and distinct from the sleeping area but immediately adjacent and accessible.

(9) Living areas shall be planned and organized to permit segregation of inmates according to existing laws, and the facility's classification plan.

(10) Each facility shall have at least one (1) special purpose cell or room to provide for the temporary detention of persons under the influence of alcohol or dangerous substances, or for persons who are uncontrollably violent or self-destructive. Such cells shall be designed and located to prevent injury to confined persons.

(11) There shall be showers with hot and cold running water at a ratio of at least one (1) shower to twenty (20) inmates in the housing areas.

- (12) There shall be floor drains maintained in working order.
- (13) If the facility maintains an arsenal it shall be located outside the inmate area accessible only to authorized persons for secure storage, care and issuance of weapons, firearms, ammunition, chemical agents and other related security equipment.
- (14) Space shall be provided for the secure storage of items an inmate has in his possession at the time of booking.
- (15) Space shall be provided for administrative, professional and clerical staff, including conference rooms, storage room for records, public lobby and toilet facilities.
- (16) There shall be designated and marked emergency exits that comply with the requirements of the Oklahoma State Fire Marshal and which permit prompt evacuation.
- (17) In areas not specifically covered by these standards, new buildings and buildings undergoing substantial remodeling shall generally meet requirements of the State Fire Marshal and the plans shall be approved by the State Fire Marshal.

(c) **Temporary tent detention facilities.** The Department must approve the establishment and design of this type of facility. The State Fire Marshal must approve it. A county may erect a tent detention facility which is temporary in nature, to meet the needs of the county for confining minimum-security inmates. A tent detention facility shall not detain juveniles and shall maintain continuous, physical and architectural separation of male and female inmates. A tent detention facility shall not be required to meet minimum requirements for a detention facility but shall provide at least the following:

- (1) **Accommodations.**
 - (A) Basic daily living needs;
 - (B) Medical needs;
 - (C) Shelter from inclement weather;
 - (D) Freedom from obvious safety hazards;
 - (E) Fire extinguishers as recommended by the Oklahoma State Fire Marshal; and
 - (F) General comfort consistent with security and control of inmates.
- (2) **Security.**
 - (A) Tents erected inside a fenced area suitable for guarding and controlling inmates; and
 - (B) Permit inmates to have visitors consistent with security requirements.