Transparency Behind Bars: A History of Kansas Jail Inspections, Current Practices, and Possible

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Abstract

Accountability in the corrections system is essential to protecting the well-being and safety of inmates. To provide a better understanding of the methods of ensuring the humane treatment of inmates, this article traces the history of Kansas's jail inspection policy, beginning with passage of the state's 1973 jail inspection statute. An examination of the legislative history of Kansas's inspection statute and jail inspection reports, in addition to oral history interviews with corrections officials, reveals that the statute was effective in providing accountability and producing measurable improvements in jail conditions. The history of Kansas's jail inspection statute, including its repeal in 1996, also reveals that the statute's failure to address key issues undermined the overall effectiveness of the legislation. A survey and evaluation of other states' jail inspection statutes provides guidance so that moving forward, states considering implementing inspection statutes will know what issues an inspection statute should address.

Keywords

jails, oversight, reform

I. Introduction

In 2008, the Criminal Justice Section of the American Bar Association issued a report and recommendation urging federal, state, tribal, and territorial governments to institute effective monitoring of correctional and detention facilities (Saltzburg, 2008, p. 2). Advocating for the adoption of comprehensive oversight plans that incorporated monitoring by independent agencies, the Criminal Justice Section outlined key components for effective monitoring, including the establishment of an effective and independent monitor,

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an adequately funded process, and an inspection process allowing the inspectors to have “broad and unhindered access” to correctional facilities (Saltzburg, 2008, pp. 2-3). Furthermore, the Section emphasized that the goal of external oversight should be to make correctional facilities “more transparent and accountable to the public” (Saltzburg, 2008, p. 5).

These recommendations for oversight reflect a broader movement to ensure correctional reform through transparency and accountability. According to Michele Deitch, a leading scholar of correctional oversight, the term *oversight* refers to several distinct functions, including regulation, audit, accreditation, investigation, legal, reporting, and inspection/monitoring (Deitch, 2010a, p. 1439). Deitch contends that each function is essential and “contributes to the overall goals of transparency and accountability,” and she notes that “[n]o one entity can meaningfully serve every function, if for no reason other than the fact that there are different constituencies involved with regard to each function” (Deitch, 2010a, pp. 1439, 1440). Deitch further asserts that “the best way to ensure that oversight is effective is to ensure that each of these critical functions is being served effectively, through whatever oversight mechanisms exist in a particular jurisdiction” (Deitch, 2010a, p. 1445).

There are various oversight mechanisms designed to ensure transparency and accountability, and as Deitch has noted, the focus should be on be “encouraging the development of a range of both effective internal accountability measures and robust external oversight mechanisms” (Deitch, 2010a, p. 1445). An ombudsman or independent monitor can be charged with investigating inmate complaints, issuing reports, and conducting routine monitoring activities (Denver Office of the Independent Monitor, 2016). Similarly, an inspector general’s office can be charged with investigating allegations of inmate abuse, and litigation can be used to force correctional facilities to protect inmates’ constitutional rights (Florida Department of Corrections, 2016). The American Correctional Association has created standards for correctional facilities, and the Commission of Accreditation for Corrections, the official accrediting body of the American Correctional Association, conducts voluntary audits of correctional facilities (American Correctional Association, 2016). States have also implemented regulatory oversight of correctional facilities, and the focus of this paper is on the regulatory oversight and inspection/monitoring of jails. Currently, 24 states regulate the oversight of county and city jails through jail inspection statutes (see Tables 1 and 2, which are based on a 2016 survey of jail inspection statutes).

Kansas, in an attempt at such transparency, passed a jail inspection statute in 1973 as part of sweeping statewide correctional reform. The statute was eventually repealed in 1996, and currently no legislation mandates the external oversight of county and city jails. An examination of the legislative history of Kansas’s inspection statute and jail inspection reports, in addition to oral history interviews with corrections officials and former jail inspectors, demonstrates that Kansas’s inspection statute did provide some level of accountability and was a catalyst for change. The history also demonstrates that fundamental flaws in the adoption of the jail inspection statute, including the language of the statute itself, ultimately undermined its effectiveness and led to its repeal. Proponents of the jail inspection statute failed to secure sufficient buy-in from stakeholders, which led to pushback against the overall reform effort. Additionally, the statute was not fully developed, and the function of the jail inspection program was not clearly defined. Finally,

the jail inspection statute was not part of a comprehensive, multifaceted approach to external oversight but was instead the only effort to establish oversight of the jails.

The history of Kansas's jail inspection statute shows that a jail inspection statute can be an effective component of a comprehensive external oversight plan. The following examination of the successes and failures of the inspection statute during the 23-year period from 1973 to 1996, along with a look at other states' current jail inspection statutes, provides guidance for those interested in creating a correctional system that is accountable and transparent.

II. Legislative History

Beginning in the 1950s, concern was growing among criminal justice professionals in Kansas regarding the conditions of the state's jails. A 1959 survey of jail administrators confirmed these concerns, indicating that the conditions in Kansas jails were deplorable (Heim, 1983). In response to the 1959 survey results, corrections officials such as Theodore ("Ted") Heim and advocates such as Ken Kerle began pushing for reform. Ted Heim, Assistant Director of Penal Institutions in Kansas, regularly recommended in the institutions' biannual report that Kansas implement a jail inspection program (Heim interview, February 8, 2016). Ken Kerle, a native Kansan and jail consultant who conducted at least 66 audits of jails in 20 different states, advocated for change in Kansas's correctional institutions, including the implementation of jail inspections (Kerle interview, April 18, 2016).

During this time, legislators and jail officials became increasingly concerned about potential civil liability for jail personnel (Heim interview, February 8, 2016). Before the 1960s, courts followed the "hands off" doctrine and allowed corrections officials wide leeway in addressing correctional matters (Cripe, Pearlman, & Kosiak, 2013, p. 71). Kansas shifted from this "hands off" approach when it held in *Levier v. State* (1972, p. 448) that an inmate's rights included "entitlement to adequate food, light, clothing, medical care and treatment, sanitary facilities, reasonable opportunity for physical exercise and protection against physical or psychological abuse or unnecessary indignity – in short, the basic necessities of civilized existence." The shift of the Kansas Supreme Court made correctional facilities more vulnerable to civil lawsuits. Fueled by growing concerns about the conditions of Kansas jails, increased worries over the possibility of lawsuits, and continued efforts by criminal justice professionals pushing for reform, the Kansas legislature passed a jail inspection statute in 1973.

A. The 1973 Jail Inspection Legislation

In 1973, comprehensive legislation was introduced in Kansas that adopted a new approach to corrections that focused on rehabilitating offenders. The legislation, Senate Bill 72, specifically noted that the legislative purpose was to establish a corrections policy ensuring that convicted persons could "be returned to private life in the communities of the state with improved work habits, education, mental and physical health and attitudes necessary to become and remain useful and self-reliant citizens" (S.B. 72, 1973 Sess.). As part of this comprehensive reform, the legislation included a provision, Section 37, to ensure that correctional institutions and jails were sanitary, safe, and not a detriment to human life. Section 37 also gave the Secretary of Corrections the authority to create jail standards and to conduct periodic jail inspections (S.B. 72, 1973 Sess.).

Section 37 went through several committees in the Kansas Senate and House of Representatives with only minor revisions, but when it reached the House Committee of the Whole, substantial additions were made (S.B. 72, 1973 Sess., As Amended by the House Com. of the Whole). The version of Section 37 that left the House Committee of the Whole (version 5) outlined the procedure the Secretary of Corrections would follow if a jail failed inspection. Under version 5, the secretary was required to notify the governing body with jurisdiction over the jail that the jail had failed inspection. If the governing body failed to make the needed repairs or improvements within 60 days, the secretary was authorized to prohibit the jail from incarcerating inmates. Version 5 also established an appeals process for jails that failed inspection. If funds to cover the cost of the necessary repairs or improvements were insufficient, version 5 provided that the governing body could appeal to the district court in the county where the jail was located. If the district court agreed that there were insufficient funds, the court could then direct the Secretary of Corrections to “effect the necessary repairs and improvements within the limitations of the legislative appropriations for such purpose” (S.B. 72, 1973 Sess., As Amended by the House Com. of the Whole).

The version 5 revisions proved to be too much for the Senate, and after the House and Senate held a joint conference committee, the House agreed to abandon its proposed revisions. The Senate and House ultimately approved a more basic version of Section 37, which was notably silent about the inspection process and failed to include an enforcement mechanism. The governor later signed Senate Bill Number 72 into law. Section 37 of the bill, which became Kan. Stat. Ann. § 75-5228 (1973), stated the following:

No person shall be incarcerated in any correctional institution or jail or any part thereof that has been deemed unsanitary, unsafe or a detriment to human life by the Secretary of Corrections. The secretary is hereby authorized to promulgate standards relating to the sanitation and safety of such institutions and jails. In promulgating such standards and in inspecting such institutions and jails, the secretary shall request assistance from the state board of health and the state fire marshal.

Although the Kansas legislature did take a positive step toward oversight by passing a jail inspection statute, the final compromise between the House and Senate resulted in a flawed statute that the legislature subsequently revisited.

B. The 1976 Amendment to Kan. Stat. Ann. § 75-5228

The first attempt to revisit the inspection statute occurred in 1976, when advocates for jail reform, such as Joseph (“Joe”) Ruskowitz, then Deputy Secretary of the Kansas Department of Corrections, pushed to amend Kan. Stat. Ann. § 75-5228 so that the statute would outline the inspection process and include an enforcement mechanism. Their advocacy, however, was met with resistance from those who did not support anything more than an advisory function for the annual inspections (Ruskowitz interview I, February 8, 2016). As a result, the 1976 amendment became yet another compromise. The amended statute added language making it clear that the jail standards created by the Secretary of Corrections were “advisory standards,” and the amendment again did not provide any guidance regarding the inspection process. In 1981, the legislature finally clarified that inspections should occur annually (Kan. Stat. Ann § 75-5228 [Supp. 1981]). The 1976 amendment did add an enforcement mechanism to the statute:

(b) Whenever the secretary shall determine that a county jail fails to meet the sanitation and safety standards applicable thereto and recommends that the use of such jail be abandoned or substantial improvements be made therein, the secretary shall meet with a committee comprised of (1) the judge of the district court of the judicial district in which the jail is located or, if the district court has more than one division, the administrative judge of such court; (2) the county attorney or district attorney of the county or district in which the jail is located; and (3) the chairman of the board of county commissioners of the county in which the jail is located. If a majority of such committee finds that the recommendations of the secretary are unreasonable, the committee shall file a statement of its findings with the clerk of the county in which the jail is located, and no further action shall be taken. If in the opinion of a majority of such committee the recommendations of the secretary are reasonable, no action shall be taken on such recommendations without a public hearing thereon. Such hearing shall be held in the courthouse in the county in which the jail is located and a notice of the time, place and purpose of such meeting published in the official county newspaper. After such hearing, the committee shall file a statement of its findings and recommendations with the clerk of the county in which the jail is located, and it shall be the duty of the board of county commissioners of such county to issue the necessary orders and cause to be made the necessary purchases or repairs in accordance with the recommendations of the committee (1976 Kan. Sess. Laws 1458).

The enforcement mechanism required that a committee comprising a judge from the county district court, the county attorney, and the chairperson of the board of county commissioners review the recommendations issued by the Secretary of Corrections regarding deficiencies identified in the jail. If a majority of the committee members found that the recommendations were unreasonable, the statute authorized the committee to ignore the recommendations. If a majority of the committee members determined that the recommendations were reasonable, the statute required the committee to hold a public hearing to discuss the matter. After the public hearing, the committee was required to file its recommendations with the county clerk, and the board of county commissioners was required to fund the necessary improvements.

There were several problems with the 1976 enforcement mechanism. First, it required the Secretary of Corrections to go through a tedious and timely process to try to get the jail to comply with the minimum standards. Second, the enforcement mechanism created a conflict of interest by having the chairperson of the board of county commissioners, the person who would ultimately have to fund the recommended repairs, serve on the committee charged with determining whether the recommendations were reasonable. Third, the 1976 amendment functionally minimized the role of the jail inspector and instead empowered a committee with no real expertise in jail conditions to be responsible for determining whether the recommendations were reasonable. Finally, the 1976 amendment did not require anyone to reinspect the jail to verify that the necessary improvements had been carried out. Collectively, the statute's deficiencies limited the enforcement mechanism of the amended statute.

C. Continued Progress and Setbacks

As the jail inspections process in Kansas continued to evolve, there were several occasions when points of contention arose and were debated among the stakeholders, including Department of Corrections employees, jail administrators, jail inspectors, and groups like the American Civil Liberties Union. The two main areas of repeated contention were the following: (1) whether the recommendations based on the annual jail inspections should be mandatory or advisory; and (2) whether the statute should contain a stronger enforcement mechanism that would allow the Department of Corrections to force a facility in noncompliance with the recommendations to be closed until the conditions of the jail were brought into compliance with the standards (Ruskowitz Interview I, February 8, 2016).

Advocates for mandatory, rather than advisory, jail standards and a stronger enforcement mechanism faced an uphill battle. Much of the resistance came from sheriffs in charge of overseeing the local jails (Ruskowitz interview I, February 8, 2016). Although many sheriffs and jail administrators were resistant to jail inspections, their reasons for opposing the inspection statute varied. Some sheriffs were opposed to any inspection statute because such a statute undermined their autonomy (Ruskowitz interview I, February 8, 2016). Other sheriffs and administrators were aware of their facilities' deficiencies, and some had even sought additional funding only to have their requests denied. Nonetheless, these sheriffs and administrators feared that having a facility's deficiencies made public would make them vulnerable to future litigation (Ruskowitz interview I, February 8, 2016).

Some sheriffs and jail administrators recognized the benefits of an inspection by a qualified jail inspector. These sheriffs and administrators understood that jail inspectors did not simply inspect the jails, write up a list of violations, make advisory recommendations, and then leave. Instead, the inspectors provided jail administration and staff with guidance and technical assistance; attended local sheriff's meetings; visited jails more often than annually; and provided resources, instruction, and guidance on how to correct deficiencies (Ruskowitz interview I, February 8, 2016). For those who embraced the jail inspection process, the inspection statute resulted in positive changes. During this period, eight to ten new jails were built, repairs were made to existing jails, and deficiencies in many facilities declined (Ruskowitz interview II, February 9, 2016).

As these positive changes were realized, advocates became hopeful that they could secure support for mandatory jail standards and a stronger enforcement mechanism. Ultimately, advocates were not able to garner the necessary support, and the positive effect of the jail inspection statute plateaued. In the early 1980s, local jails stopped receiving federal funding through the Law Enforcement Assistance Act of 1965 to make improvements to facilities and provide training, and local governing bodies were forced to look to their own general funds to make the needed repairs (Kerle interview, April 18, 2016). These local governing bodies were reluctant to spend money from general funds because improving jail conditions was not a politically appealing expenditure (Kerle interview, April 18, 2016). Consequently, in the late 1980s, the Secretary of Corrections ended the jail inspections program, and the legislation remained dormant for almost a decade.

D. Repeal of the Jail Inspection Statute in 1996

In 1996, Governor Bill Graves initiated a directive to the Secretary of Corrections to identify nonessential programs. In the letter to the House Judiciary Committee, the Secretary of Corrections identified the annual jail inspections as a program that could be

discontinued "because the [Kan. Stat. Ann. § 75-5228] standards are advisory only and no authority is provided to enforce them" (letter from the Secretary of Corrections, 1996). The Secretary of Corrections further noted that "[u]ltimately, local officials choose whether to implement the corrective actions recommended by jail inspectors and are responsible for defending litigation concerning local detention facilities" (letter from the Secretary of Corrections, 1996). Based on this information, the governor recommended elimination of the jail inspections program in his fiscal year 1997 budget, and House Bill No. 2791, which proposed elimination of the jail inspection program, was introduced (H.B. 2791, 1996 Sess.).

At a committee hearing before the House, a representative from the Department of Corrections appeared in support of the bill. According to supplemental notes prepared by the Legislative Research Department, "[t]he representative noted that jail inspections standards are advisory only and the Department has no authority to enforce them. The local officials ultimately decide whether to implement the standards. The program is unnecessary and expensive and, therefore, can be eliminated" (H.B. 2791, 1996 Sess., Supplemental Note). The legislature agreed with the committee recommendation, and Kan. Stat. Ann. 75-5228 was repealed in 1996 (1996 Kan. Sess. Laws 413).

III. Kansas Jail Inspection Reports: Positive and Negative Effects of the Inspection Program

An examination of the jail inspection reports provides insight into the ability of the inspection statute to produce change, as well as the ways in which the jail inspection program was being marginalized. When inspections were first conducted in 1975, fewer than 2% of jails (2/142) met the minimum jail standards (Kan. Dep't. of Corr., First Annual Jail Inspection Report 1975, pp. 1-2). Rather than being discouraged by this result, jail inspectors noted in early reports that in an age of increasing crime and incarceration, local governmental agencies seemed to recognize the need for safe, secure, and sanitary detention facilities and were making outstanding progress in trying to achieve those endeavors (Kan. Dep't. of Corr., Annual Jail Inspection Report 1976, p. 77). The local agencies' commitment to ameliorating jail conditions resulted in actual improvements to jail conditions. In 1976, more than 23% of jails (28/121) met the minimum jail standards, while 21 jails were voluntarily closed because of an inability to comply with jail standards (Kan. Dep't. of Corr., Annual Jail Inspection Report 1976, p. 77). By 1977, more than 32% of jails (38/118) were in compliance with minimum standards, and that number increased to more than 33% (41/122) in 1978 (Kan. Dep't. of Corr., Annual Jail Inspection Report 1977, p. 5; Kan. Dep't. of Corr., Annual Jail Inspection Report 1978, pp. 3, 9).

Although inspection reports demonstrate that meaningful progress and improvements did occur, as of 1978, three years into the inspection process, more than 66% of jails (81/122) were still not in compliance with minimum jail standards (Kan. Dep't. of Corr., Annual Jail Inspection Report 1978, pp. 3, 9). The Department of Corrections recognized the need for more rapid improvement in jail conditions, and the 1977 Annual Jail Inspection Report noted the following:

In this age of recognized human rights, more and more people are becoming aware of the right of the confined and seeking the assurance those rights are respected. State and federal courts throughout the nation are hearing cases regarding alleged 'cruel and unusual punishment'

because of the deplorable conditions of city, county and state detention/correctional facilities. With the changing public and judicial attitudes impacting on the environment of local detention operations, it is anticipated that rapid change for the improvement of detention facilities and programs is inevitable. (Kan. Dep't. of Corr., Annual Jail Inspection Report 1977, p. 2)

Over the years, the number of jails being closed for noncompliance declined, but jail inspection reports in the 1980s still made note of jails that were "no longer in operation due to noncompliance with jail standards" (Kan. Dep't. of Corr., Annual Jail Inspection Reports, 1982-1984). One such report in 1982 noted that Hamilton County Jail had been "torn down due to deplorable conditions and noncompliance with Jail Standards" (Kan. Dep't. of Corr., Annual Jail Inspection Report 1982, p. 55). Even without a strong enforcement mechanism, Kansas's jail inspection statute produced notable improvements in Kansas jails. The effectiveness of this enforcement mechanism, however, was limited to situations in which facilities had "deplorable conditions." Facilities with continued annual violations that undercut the safety and security of inmates and staff were allowed to continue to house inmates because the violations did not rise to the level of deplorable conditions.

Serious violations frequently noted in jail inspection reports included the following: (1) hazardous materials and/or equipment in cells; (2) electrical cords and/or fixtures accessible to inmates; (3) does not comply with Department of Health and Environment standards; (4) does not comply with State Fire Marshal's regulations; (5) does not provide three meals daily; (6) inadequate ventilation; (7) does not maintain adequate separation of inmates; (8) no smoke detection system; and (9) too many inmates in the dormitories. Many facilities had the same violations noted year after year in the inspection reports with no apparent sign of improvement. For example, in 1977, Rice County Jail had 21 deficiencies noted in the annual jail inspection report, all of which had been previously noted in prior inspection reports. Of the 21 deficiencies noted in 1977, seven were found to be urgent, eight were deemed necessary, and the remaining six were noted as desirable (Kan. Dep't. of Corr., Annual Jail Inspection Report 1977, pp. 37-38). One year later, Rice County Jail was cited for 19 deficiencies, all of which had been noted in the 1977 jail inspection report (Kan. Dep't. of Corr., Annual Jail Inspections Report 1978, pp. 33-34). By 1980, Rice County Jail had reduced its deficiencies to 12, although 11 had been noted in previous inspection reports (Kan. Dep't. of Corr., Annual Jail Inspections Report 1980, p. 40).

Whereas some of these deficiencies were serious and would be expensive to address, certain other deficiencies, such as having no written policies and procedures, would cost little money to correct. Yet, these easily remedied deficiencies remained year after year with no improvement. Only the facilities with glaring violations were held accountable, while other facilities with violations not deemed deplorable were permitted to continue housing inmates despite not making the recommended improvements.

Despite the shortcomings of the jail inspection statute, the inspection reports show that the inspection statute did produce tangible benefits. Starting in 1982, the reports contain frequent findings that "no deficiencies [were] found" at jail facilities (Kan. Dep't. of Corr., Annual Jail Inspection Report 1982). Furthermore, some facilities with long-standing, repeated deficiencies were, over time, able to reduce the number of violations substantially. By 1984, Rice County Jail had only two deficiencies noted in its annual inspection report

(Kan. Dep't. of Corr., Annual Jail Inspection Report 1984, p. 39). This change marked a 10-fold improvement for Rice County Jail from 1977 to 1984.

IV. Reflecting on the History of Kansas's Jail Inspection Statute

Several lessons can be gleaned from the history of Kansas's jail inspection statute. Jail inspection statutes must be comprehensive and fully developed, and the function of the statute must be clearly established. Kansas's inspection statute was an attempt to serve a regulatory function as well as an inspection/monitoring function. The blended design of the statute resulted in the undermining of both functions. The legislation tried to exercise regulatory control over the quality of jails, but without an enforcement mechanism, the statute could not mandate compliance with jail standards (Deitch, 2010a, p. 1440). On the other hand, the inspection statute was also designed to serve an inspection/monitoring function. Kansas's inspection statute was viewed as a way for sheriffs and jail administrators to receive technical support and advice from jail inspectors (Deitch, 2010a, p. 1443). This blend of two very different functions served to heighten the pushback from reluctant sheriffs and jail administrators, and as such, it undermined the overall effectiveness of the statute. Additionally, Kansas's inspection statute was the only means of external oversight of state jails. States should not, however, rely on a jail inspection statute as the sole means of oversight. Rather, an inspection statute should serve a concrete and identifiable function that is part of a larger, multifaceted approach to correctional oversight.

For jail inspection legislation to produce sustainable change, key stakeholders must buy into the process. Although there were advocates for reform in Kansas, the jail inspection statute ultimately was met with much resistance from other key stakeholders, including some sheriffs, jail administrators, legislators, local governing bodies, and the public. The jail inspection statute was, in some ways, an afterthought to larger statewide correctional reform. Consequently, the focus was on securing support for the overall correction reform legislation rather than the specific jail inspection provision. Building widespread support for jail inspections is timely and labor-intensive and requires advocates to identify and promote varying and differing rationales for oversight. Certainly, the humane treatment of inmates should be the primary driving force for oversight. Identifying secondary benefits, however, can also persuade reluctant stakeholders to embrace change. These secondary benefits include technical support, reduced litigation, and the avoidance of bad publicity.

V. Moving Forward: A Roadmap for Future Jail Inspection Legislation

In its recommendation and report, the Criminal Justice Section of the American Bar Association outlined key requirements for effective monitoring of correctional facilities (Saltzburg, 2008, pp. 2-3). These key requirements include having an independent monitor; ensuring that the oversight agency is properly funded and staffed; ensuring that inspectors have the necessary training and expertise; guaranteeing that the monitoring agency has gold-key access to the facility, records, and inmates; providing protection for inmates and staff against retaliation; requiring the facility to cooperate fully in the monitoring process; allowing the monitoring agency to conduct scheduled and unannounced visits; making the monitoring reports public; and requiring follow-up visits to ensure that any deficiencies noted are properly addressed (Saltzburg, 2008, pp. 2-3). Although a survey of current jail

inspection statutes demonstrates that some states are moving forward and are including the recommended key requirements, the survey also demonstrates that more work needs to be done.

A. Prior Jail Inspection Research

In 2010, Michele Deitch conducted a “state-by-state inventory of independent oversight mechanisms for correctional institutions” (Deitch, 2010b, p. 1755). This comprehensive study involved an examination of oversight bodies that operated at the state level. Deitch canvassed “Departments of Correction, state legislative offices, and various advocacy groups in each state” (Deitch, 2010b, p. 1756). Because approaches to oversight varied among the states, Deitch’s research team tried to locate a contact person in each state to determine the oversight mechanism, if any, used within the state (Deitch, 2010b, p. 1756).

Deitch’s research was an impressive undertaking and is an excellent resource for learning more about the different approaches used by each state, but the study was conducted more than 6 years ago, and some of the information included is understandably dated. For instance, when Deitch conducted her research in 2010, Alabama had a statute mandating that the Board of Corrections conduct semiannual inspections of local jails (Deitch, 2010b, p. 1781; Ala. Code § 14-6-81). In 2015, however, the Alabama legislature repealed this inspection statute (Ala. Code 2015-70, § 1[50]). Now, only grand juries are statutorily mandated to conduct county jail inspections (Ala. Code § 12-16-191). Additionally, Deitch’s study does not provide an evaluation of the various approaches used by states. As Deitch noted, she specifically refrained from evaluating the different approaches because she wanted the research to “be a starting point for discussion” (Deitch, 2010b, p. 1755). Yet, to have a better understanding of what provisions should be included in an inspection statute, evaluation of the effectiveness of different provisions within an inspection statute is essential. Accordingly, it is important to build upon and expand Deitch’s previous research.

B. Methods Used in the 2016 Survey

For the 2016 jail inspection statute survey, WestlawNext was used first to identify which states have jail inspection statutes. One researcher conducted the survey by using the same combination of search terms for each state (jail /p inspection!), and only state statutes were examined – the survey did not examine city, county, or agency regulations. The search was run for each of the 50 states, and if the original search did not produce a hit, a second researcher verified that the state did not have an inspection statute.

To be included in the results in Table 1, a statute had to be current and had to apply to all county and city jails – for example, not just to juvenile facilities. Although Table 1 includes both states that require jail inspections (n=25) and states that require only fire and/or health safety inspections (n=5), states with only fire and/or health safety inspections are not included in the discussion of the results (n=25). Once state jail inspection statutes were identified, each statute was evaluated to determine (1) what oversight body was in charge of the inspections (Table 1), (2) whether the statute included a discussion of the inspection process, and (3) what enforcement mechanism, if any, the statute contained

(Table 2).^{1,2,3} Additionally, an exploratory survey of each jail inspection statute was conducted to gather information regarding issues that statutes should address when the inspection process is outlined.

C. Oversight Body

Internal investigations and internal audits are an important part of monitoring jail conditions, but true oversight comes from an external oversight body (Deitch, 2010b, p. 1757). Whether the oversight body is independent, however, should not be the only measure for determining the appropriate oversight body. Inspectors should also have adequate training and expertise to conduct their core duties of inspecting, consultation, and technical assistance (Rosazza, 2007, p. 81). Thus, in evaluating the most effective oversight body, attention must be paid to the independence, training, and expertise of the inspectors. State statutes vary as to which body is charged with overseeing the jail inspection process, and consequently, they vary as to whether there is true external oversight and whether the inspectors have the requisite training and expertise.

Of the 25 states with jail inspection statutes, the statutes of 11 states are in line with Kansas's former jail inspection statute and require the state's Department of Corrections to conduct jail inspections. For states that do not have a unified corrections system, having the state's Department of Corrections oversee jails inspections constitutes sufficient independent oversight (Deitch, 2010b, p. 1757).

Additionally, Department of Corrections employees have corrections experience and can provide technical support to help jails make the necessary repairs and improvements. Other states, such as Texas and Nebraska, require that jail inspections be conducted by a separate board or commission. Although a minority of the states use this approach, a separate board or commission that operates independently of the correctional system provides truly independent oversight and expertise.

¹ No statute on jail inspection was found for the states of Alaska, Arizona, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, Rhode Island, South Dakota, Utah, Vermont, and Wyoming.

² Jail inspection statutes were at one time in place in several states but have since been repealed. States that have repealed statutes include the following: Alabama (Ala. Code § 1975 14-6-81, repealed Apr. 21, 2015); Colorado (Colo. Rev. Stat. § 17-26-134, repealed Apr. 24, 1996); Connecticut (Conn. Gen. Stat. § 18-47, repealed Oct. 1, 1960); Kansas (Kan. Stat. Ann. § 75-5228, repealed July 1, 1996); and Washington (Wash. Rev. Code § 72.01.420, repealed June 23, 1977).

³ Data included in Tables 1 and 2 are from the statutes of the following states: Arkansas (Ark. Code Ann. § 12-26-107); California (Cal. Health and Safety Code § 13146.1; 101045); Delaware (Del. Code Ann. tit 11, § 6504); Florida (Fla. Stat. § 951.23); Georgia (Ga. Code Ann. § 15-12-71); Idaho (Idaho Code Ann. § 20-622); Indiana (Ind. Code § 11-12-4-2); Iowa (Iowa Code § 356.43); Kentucky (Ky. Rev. Stat. Ann. § 441.064); Maine (Me. Rev. Stat. tit. 34-A, § 1402); Michigan (Mich. Comp. Laws § 791.262); Minnesota (Min. Stat. § 241.021); Mississippi (Miss. Code Ann. § 13-5-55); Montana (Mont. Code Ann. § 50-1-203); Nebraska (Neb. Rev. Stat. § 47-109; § 83-4, 124-134.01); New Jersey (N.J. Stat. Ann. § 30:1-15); New Mexico (N.M. Stat. Ann. § 33-3-4); New York (N.Y. Correctional Law § 46); North Carolina (N.C. Gen. Stat. § 153A-222); North Dakota (N.D. Cent. Code Ann. § 12-44.1-24); Ohio (Ohio Rev. Code Ann. § 2939.21); Oklahoma (Okla. Stat. tit. 57, § 1; tit. 57, § 59); Oregon (Or. Rev. Stat. § 423.478); Pennsylvania (61 Pa. Cons. Stat. § 1105); South Carolina (S.C. Code Ann. § 24-9-30 through § 24-9-50); Tennessee (Tenn. Code Ann. § 41-4-116); Texas (Tex. Gov't Code Ann. § 511.001 through 511.018); Virginia (Va. Code Ann. § 53.1-68 through 53.1-71); West Virginia (W. Va. Code § 7-1-5); and Wisconsin (Wis. Stat. § 59.54).

Table 1: Summary of State Jail Inspection Statutes (Oversight)

	Oversight Body				Fire/Health Only	Other
	DOC	Grand Jury	County Commission			
Arkansas						X
California	X				X	
Delaware						
Florida					X	
Georgia		X				
Idaho			X			
Indiana	X					
Iowa	X					
Kentucky	X					
Maine	X					
Michigan	X					
Minnesota	X					
Mississippi		X				
Montana					X	
Nebraska		X	X			X
New Jersey					X	
New Mexico			X			
New York						X
N. Carolina					X	
N. Dakota	X					
Ohio		X				
Oklahoma		X	X			
Oregon	X					
Pennsylvania	X					
S. Carolina	X					
Tennessee			X			
Texas						X
Virginia						X
West Virginia			X			
Wisconsin			X			

Another approach, used by seven states, is to require the board of county commissioners to conduct inspections of local jails. The county commissioners do not operate the county jails, but they determine funding for jails. Additionally, the statutes do not make it clear who is charged with actually conducting the inspections. If the commissioners themselves conduct the inspections, there is an issue because the commissioners most likely do not have the expertise and training necessary to inspect and provide technical assistance to the local jails. The county commissioners could hire external inspectors with the requisite training and expertise, but the statutes do not require this approach. Regardless of who actually conducts the inspections, the county

commissioners are still charged with overseeing the process, so there is no external, independent oversight.

Finally, five states rely on grand juries to conduct inspections. Although grand juries constitute an independent oversight body, grand jurors generally do not have sufficient training or expertise in conducting inspections nor are they able to provide technical support to help jails make the necessary repairs or improvements. Independent oversight without sufficient training and expertise is not a satisfactory approach to external oversight of jails.

D. Inspection Process

The history of Kansas's jail inspection statutes demonstrates the need to provide direction regarding inspections and suggests that formalizing the inspection process can help make a jail inspection statute more effective. Requirements that inspection statutes should address include the creation of jail standards, how often jail inspections are required, whether the inspections are announced in advance, the process for jails taking corrective action to address deficiencies, the appeals process, and whether the standards are mandatory or advisory. State inspection statutes should also give inspectors "gold-key" access – inspectors should have access to all parts of the facility, inmates, staff, and records, and conversations with jail inspectors should be confidential. Additionally, the statute should ensure that the inspection is more than just a "paper review" by requiring inspectors to observe practices and talk to inmates and staff. Finally, to ensure that inspections lead to accountability and transparency, the statute should require that the inspection reports be made public.

States should also ensure that jail standards are in place to guide the inspection process. These jail standards should be developed with input from key stakeholders, including corrections officials, local and state government actors, and citizens, and state inspection statutes should address how the standards are developed, what subjects the standards should cover, and how the standards can be adjusted or revised. The jail standards should go beyond environmental issues and address other key issues, such as use of force, health care, mental health, and other issues involving the treatment of inmates.

Maine's jail inspection statute provides a comprehensive approach to the jail inspection process. Notably, Maine's statute requires the Department of Corrections to create jail standards "setting forth requirements for maintaining safe, healthful and secure facilities" (Me. Rev. Stat. tit. 34, § 1208). The inspection statute requires the commissioner to conduct a comprehensive inspection every 2 years and supplemental inspections at least 3 times every 2 years (Me. Rev. Stat. tit. 34, § 1208).

Maine's inspection statute also addresses whether the inspections are announced or unannounced. The statute provides that the commissioner may have access to any records the commissioner deems necessary and that the commissioner may conduct unannounced or announced inspections. After conducting an inspection, the commissioner is required to send a report of the inspection within 15 days to the necessary parties. The report must include a summary of the inspection findings and any issues of noncompliance (Me. Rev. Stat. tit. 34, § 1208[2][D]).

Maine's statute provides county and municipal officials 60 days in which to take corrective action or offer a plan for correcting deficiencies noted in an inspection report. If the county or municipal officials fail to fix the deficiencies or offer a corrective plan, the

commissioner has the authority “to restrict or modify the operations of the facility ... which action may include ordering an entire facility closed until the deficiencies have been corrected” (Me. Rev. Stat. tit. 34, § 1208[3][B]). Before such action is taken, the statute requires that the commissioner first offer to consult with county or municipal officials to discuss the planned action. The commissioner is also given emergency powers, which permit the commissioner to take immediate action “if noncompliance is determined to endanger the safety of the staff, inmates or visitors of any county or municipal detention facility” (Me. Rev. Stat. tit. 34, § 1208[4]).

Table 2: Summary of State Jail Inspection Statutes (Enforcement)

	Enforcement Mechanism				
	None	Remedy	Court	Close	Other
Arkansas		X	X	X	
Delaware	X				
Georgia	X				
Idaho	X				
Indiana		X	X	X	
Iowa		X	X	X	
Kentucky	X				
Maine	X				
Michigan			X	X	
Minnesota				X	
Mississippi					X
Nebraska		X		X	
New Mexico	X				
New York		X	X	X	
N. Dakota	X				
Ohio	X				
Oklahoma					X
Oregon	X				
Pennsylvania	X				
S. Carolina		X		X	
Tennessee	X				
Texas		X		X	
Virginia			X	X	
West Virginia	X				
Wisconsin	X				

Jail facilities in Maine are permitted by statute to request variances from established departmental standards (Me. Rev. Stat. tit. 34, § 1208[5]). Maine’s jail inspection statute also requires the commissioner to create an advisory committee, which the commissioner must consult when establishing jail standards and “may consult when variances are sought, when actions are contemplated by the commissioner in response to a failure to comply with standards and when the commissioner determines that the consultation is necessary for other reasons” (Me. Rev. Stat. tit. 34, § 1208[6]). Finally, the jail inspection statute allows

the commissioner to provide technical assistance “to facilitate compliance with standards” (Me. Rev. Stat. tit. 34, § 1208[7]).

Maine’s jail inspection statute provides a good example of the issues a jail inspection statute should address, but its inspection statute is not without problems. For instance, the inspection statute permits the commissioner to “dispense with this inspection if, when it is due, the facility is accredited by a nationally recognized correctional accrediting body” (Me. Rev. Stat. tit. 34, § 1208[2]). Although the intent of this provision may be to encourage facilities to go through the accreditation process, accreditation “is designed to measure an agency’s specific operations against best practices in the field, rather than to assess whether any wrongdoings or human rights violations have occurred” (Deitch, 2010a, p. 1441). Furthermore, accreditation is a “relatively static form of oversight, as it is based on a snapshot view of the facility at a particular point in time” (Deitch, 2010a, p. 1441). Accreditation should supplement rather than replace the jail inspection process.

E. Enforcement Mechanism

Before determining what type of enforcement mechanism, if any, a jail inspection statute should have, the function of the jail inspection statute must first be identified. If an inspection statute is meant to be a form of regulation, the statute must contain some kind of enforcement mechanism (Deitch, 2010a, p. 1440). On the other hand, if the purpose of the statute is to provide inspection and monitoring, an enforcement mechanism may not be necessary, and the inspector’s recommendations may be advisory (Deitch, 2010a, p. 1443). Some viewed Kansas’s jail inspection statute as a regulation, but the provisions of the statute – advisory jail standards and a weak enforcement mechanism – resulted in a statute that functioned to provide only inspections and monitoring. As the history of Kansas’s jail inspection statute demonstrates, a statute that provides only inspections and monitoring can produce some change, but additional oversight measures, such as true regulation, may be necessary because sometimes more is needed to bring jails into compliance with minimum jail standards. Even when an inspection statute serves a regulatory function, the enforcement mechanism should be “used as a last resort, when all other efforts to work with local officials to resolve issues have failed” (Martin, 2007, p. 23).

The majority of state jail inspection statutes (13/25) do not mention an enforcement mechanism. Requiring jail inspections is a good first step and can lead to positive change, but the lack of an enforcement mechanism ultimately undermines the effectiveness of the oversight, especially when the jail inspection statute is the only process in place to provide the external oversight of jails. Other inspection statutes include an explicit enforcement mechanism provision. In 10 states, the inspecting body is permitted to place limitations on the jail, including closing the jail, if serious safety concerns are raised during inspection and to close the jail if it fails to take appropriate corrective action. Four states provide a court remedy for noncompliance with jail standards.

Mississippi’s jail inspection statute contains a unique enforcement mechanism provision. In Mississippi, if a grand jury’s inspection of a jail reveals “any violation or neglect of duty as to the jail, the sheriff may be punished as for a misdemeanor, or may be fined as for a contempt, such not to exceed Fifty Dollar (\$50.00)” (Miss. Code Ann. § 13-5-55). Holding a sheriff criminally liable for neglect of duty is a heavy sanction, and grand juries may be reluctant to raise concerns regarding problems identified during an inspection because of the punishment the sheriff would face. Additionally, sheriffs may be in control

of county jails, but they are also themselves reliant on local government bodies to provide funding to make the necessary repairs.

When what enforcement mechanism should be used in a jail inspection statute is under consideration, it is important to keep in mind that the goal of the inspection process should be to ensure compliance with jail standards and to ensure that “enforcement is used as a last resort” (Martin, 2007, p. 23). Accordingly, the enforcement mechanism should serve to encourage jail facilities to comply with the jail standards requirement and should not be simply punitive in nature, and the mechanism should not be so severe that those conducting the inspections are reluctant to note deficiencies.

VI. Conclusions

Inspection statutes mandating the external oversight of jail conditions can help ensure the safety and well-being of inmates housed in jails; however, simply having a statute on the books accomplishes little if the statute is not followed or enforced. To ensure that an inspection statute will be followed, interested stakeholders – from taxpayers to sheriffs and administrators to state legislators – must believe that an inspection statute is beneficial. An inspection statute must also be tailored to fit the needs of the corrections system and local jails within the state. To craft a statute that has support and is tailored to fit the needs of a corrections system, future research is necessary to determine what the current oversight practices are within a state and to gauge interest in and commitment to the external oversight of jails. Furthermore, a jail inspection statute alone is not sufficient to ensure adequate external oversight. A multifaceted, comprehensive approach to oversight that addresses the seven distinct functions identified by Deitch (regulation, audit, accreditation, investigation, legal, reporting, and inspecting/monitoring) is key to ensuring accountability and transparency. Ultimately, continued research and conversations regarding correctional oversight and jail inspection statutes are essential to instituting reform that guarantees the safe and humane treatment of inmates.

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