

LATE NIGHT/EARLY MORNING RELEASE

SUMMARY

The Humboldt County Grand Jury received a complaint asking it to look into several issues regarding late night/early morning release of inmates from the County Jail. The complainant expressed concern that release of persons in downtown Eureka late at night and with no resources--no money, no transportation, no housing-- was contributing to increased crime.

The Grand Jury investigated:

- The late night/early morning release of inmates from the Humboldt County Correctional Facility,
- The problem of inmates who have been arrested in distant areas of the county, and who are released in downtown Eureka,
- The return of cash to released inmates rather than the issuance of a check in lieu of the money surrendered at the time of arrest.

The primary focus of our investigation was on the policies and procedures utilized by correctional facility staff when dealing with people arrested for inebriation and held in the correctional facility for only a short time. However, our investigation also looked at the releases of all inmates, and we conclude that the same policies and procedures should be in effect for any inmate.

BACKGROUND

There have been three deaths in the last year that involved inmates released from the Humboldt County Correctional Facility either late at night or early in the morning. A "Town Hall" Meeting in April of 2014 at the Wharfinger Building was held for the citizens of Humboldt County. Representatives of many of the County's Law Enforcement Agencies were in attendance. When the meeting was opened to public comment, many people voiced the belief that the three deaths were attributable to late night/early morning release from the correctional facility. The Sheriff has recently issued a press release (May 6, 2014) announcing modified release policies for those held only a short time for inebriation. Essentially the new policies require that, on release, correctional officers document that inmates are told that they can stay in the waiting area of the jail until morning if they so desire and that cash taken from those being held only for short periods of time be returned. It is of course too soon to be able to assess the impact of this modification of release policy. The Sheriff's press release indicates that only a small number of those released elect to stay in the jail, and many are still released without the return of the cash they had on their persons when arrested.

APPROACH

We received a copy of the Humboldt County Correctional Facility Policies and Procedures for detention in sobering cells, when inmates "are a threat to their own safety or the safety of others

due to their state of intoxication,” revised December 20, 2013. We include two portions of the policy here as it refers to times of release for those inmates who are arrested for intoxication.

Procedure NO. B-007

Inmates who are eligible to be released from custody after being held due to the level of their intoxication, may be released when the Shift Supervisor determines that they are no longer a threat to their own safety or the safety of others due to the state of their intoxication and are able to complete the booking and release procedures. (Paragraph #20)

The timeframe an arrestee is to remain in custody due to the state of their intoxication can vary and is to be determined by the Shift Supervisor. Generally, three to four hours from the time of arrest is a guideline Shift Supervisors may use to consider if an arrestee is ready for release. However, other factors may come into play that could reduce or extend the three to four hour time frame including, but not limited to, the intoxicating substance ingested (alcohol, drugs, glue, paint or a combination of substances), arrestee’s age, gender, weight and other medical or psychological issues, and the display of aggressive behavior. Health Services staff is to be consulted when there are any questions or concerns relative to the health and general physical well-being of the arrestee. When a Shift Supervisor deems it necessary to consult with Health Services staff, the Shift Supervisor shall write a report outlining the reasons for consulting the Health Services staff on the release. (Paragraph #21)

In addition to sobered inebriates, the jail regularly makes late night/early morning releases of inmates who have completed their sentences.

The Jury met with Humboldt County Correctional Facility officers to discuss the policy of early morning release, the interaction between law enforcement and mental health care providers, and the obligation and/or desirability of returning detainees to their place of arrest.

Members of the Jury met with the Department of Health and Human Services and with an executive from Humboldt Transit Authority as well as a Humboldt County Supervisor. Some members attended a “town hall” meeting where a panel of criminal justice officials discussed the events leading to the death of a local citizen.

DISCUSSION

Time of Release

The Sheriff and Humboldt County Correctional Facility decision makers told us they were concerned that detaining arrestees beyond the time when they were sober enough to not pose a threat to others or themselves could open the county to civil rights liability. California law provides that an arrestee must be brought before a court for arraignment within 48 hours of arrest. (Penal Code Section 825) The United States Supreme Court has held that, absent special circumstances such as punitive delays, arrestees can be held for up to 48 hours before either

being released or brought before a magistrate. (*County of Riverside v. McLaughlin et al* (1991)). [See also *Teter v. Newport Beach*, (2003) 30 Cal 4th 446 for the California Supreme Court's holding that persons arrested with the contemplation of release pursuant to Penal Code Section 849 (b)(2) (intoxicated persons) are prisoners and not civil committees.]

We were told that the Sheriff feels constrained by Penal Code Section 849(b) (2). In relevant part that section says "Any peace officer *may* release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever....The person arrested was arrested for intoxication only "***and no further proceedings are desirable***". Emphasis supplied.

It seems clear to the Jury that this section is discretionary. It says an officer may do certain things but is not required to do them. In a situation where the safety of the community is at issue, the Jury believes that it is extremely unlikely that any court will hold that the Sheriff is violating the law by deciding that the exercise of such discretion should not occur between the hours of 9 pm and 6 am when the exercise of that discretion can put the community at risk. The Sheriff should order that no decision as to whether or not "no further proceedings are desirable" will be made between the hours of 9 pm and 6 am.

We believe that it is unlikely that any person lawfully arrested could make a successful claim against the county because he or she was held until the morning following the arrest because the Sheriff has concluded that release between the hours of 9 pm and 6 am constitutes an avoidable hazard. Humboldt County Correctional Facility policy currently allows releasees to wait until morning in a lobby, but many releasees choose to leave the jail in the middle of the night. The people of Humboldt County would be better served if Humboldt County Correctional Facility stopped releasing inmates between 9 pm and 6 am.

Place of Release

California Penal Code Section 686.5 mandates that for an indigent person who is arrested "more than 25 airline miles" from where he or she is released from custody and who will not be charged, "the arresting agency shall, at his request, return or provide for return of such person to the place of his arrest". Humboldt County Correctional Facility staff told us they do not routinely follow this policy.

Through this investigation we learned that Humboldt County Correctional Facility officials could work with the Humboldt Transit Authority to arrange for arrestees from distant parts of the county to be provided with bus tickets to help them get back to their places of residence. We think that Humboldt Transit Authority would prove amenable to this procedure. Generally speaking the early morning buses are not crowded and making bus tickets available would be virtually cost free as the buses will run in any case. In some instances the place of arrest is not accessible by public transportation and Humboldt County Correctional Facility must make other arrangements.

Return of Monies

We discovered that Humboldt County Correctional Facility's current policy of confiscating all cash possessed by arrestees who are not to be imminently released and giving them a check in reimbursement is problematic. We were informed that when a person is arrested his / her cash is taken from that person, photographed and not returned on release. Instead of returning the cash, the Sheriff's Department returns a check to the inmate in the amount that was surrendered. We recommend that cash be photographed and placed into an envelope and sealed. An arrestee should be asked to sign an acknowledgement of that procedure. On release the arrestee would have available the money possessed upon arrest. The current policy of issuing checks to releasees is not helpful after the close of business, not only because banks are closed, but also because most merchants do not cash checks or money orders. We are aware that the Humboldt County Correctional Facility is also contemplating issuing debit cards rather than checks. We believe issuing debit cards would be of almost no more utility than issuance of checks. Again our concern is that releasees have adequate resources to be able to return home and not be left on the streets without the spendable resources they had at the time of arrest.

As noted above, the Sheriff has recently announced a change in policy such that for those persons detained for brief holds and who will not be charged, primarily public inebriates; their cash will be returned to them. We think this policy should apply to all persons arrested and then released.

FINDINGS

- F1. There are early release guidelines in the Policy and Procedures Manual from the Humboldt County Correctional Facility which allow release of arrestees at any time and arrestees are often released late at night or early in the morning,
- F2. Three deaths have occurred in the last year involving early morning releases from the jail,
- F3. Currently when inmates are arrested, whatever money they have on their person is taken from them. The money is tallied and on release they are given a check for that amount. If they are held only for sobering, their cash is returned to them upon release,
- F4. When inmates from eastern, northern and southern parts of the county are released, they are not returned to the place of their arrest, but let out onto the streets of Eureka. In many instances, this policy appears to violate Penal Code Section 686.5,
- F5. Public transportation is unavailable approximately between the hours of 11 pm and 6 am.

RECOMMENDATIONS

- R1. The Grand Jury of Humboldt County recommends that the Humboldt County Correctional Facility change its early release policy to eliminate releases between 9:00 pm and 6:00 am. (F1, F2)

R2. The Grand Jury of Humboldt County recommends that Humboldt County Correctional Facility return to the inmates the cash money that was taken at the time of arrest rather than issuing a check or debit card. (F3)

R3. The Grand Jury of Humboldt County recommends that Humboldt County Correctional Facility and the Board of Supervisors enter into an agreement with Humboldt Transit Authority to provide tickets for out of town inmates at the time of release to return them to the place they were arrested. If no public transportation serves the place of arrest, and it is more than 25 air miles from Humboldt County Correctional Facility, correctional staff must make other, appropriate arrangements pursuant to Penal Code Section 686.5. (F4, F5)

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses from the following:

- The Humboldt County Sheriff is to respond to recommendations 1, 2, and 3.
- The Humboldt County Board of Supervisors is to respond to recommendation 3.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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