

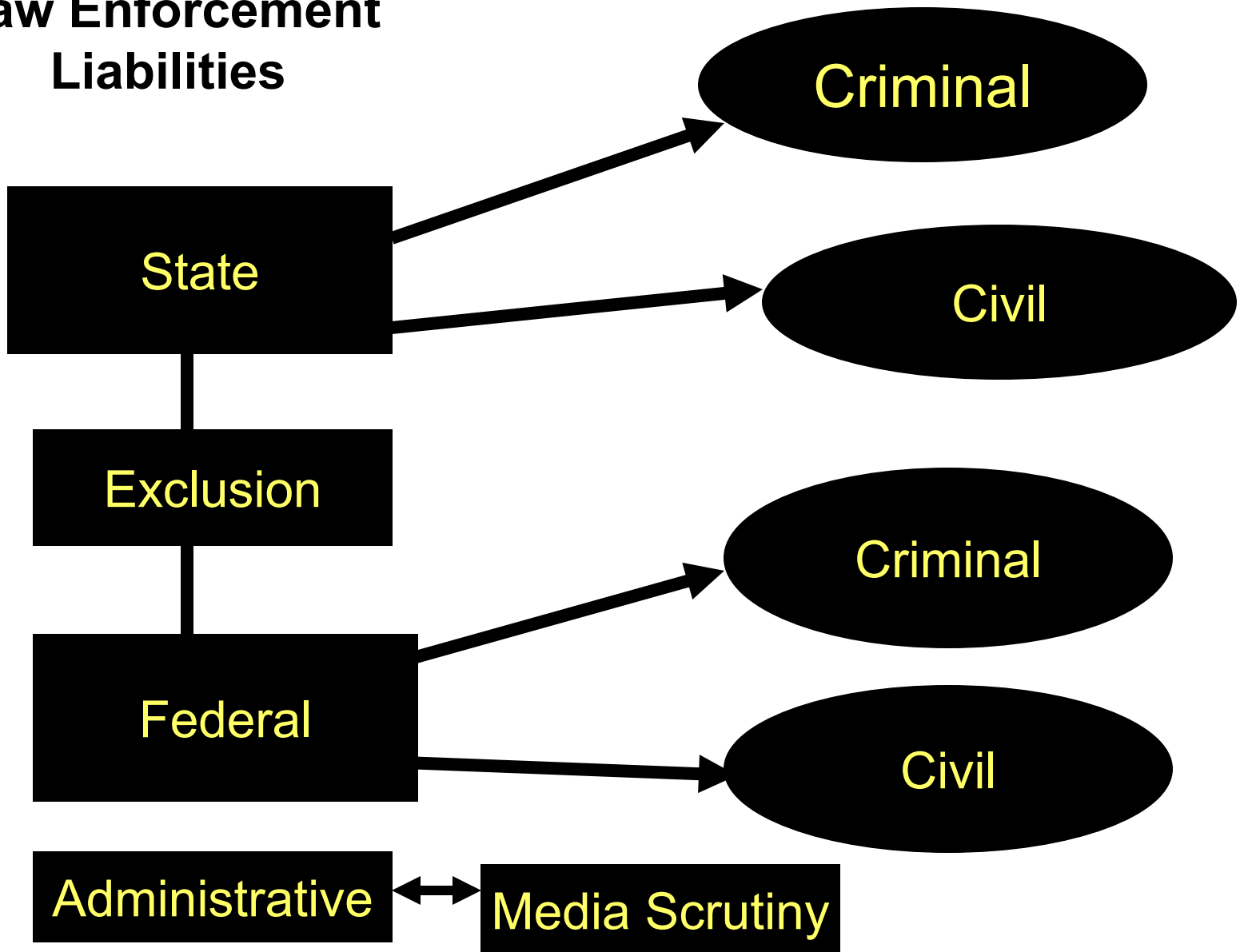
***Legal Update
Jail Operations***

***Presented By KACO
Public Agency Training Council***



What are the liabilities of a Jail operation?

Law Enforcement Liabilities



Policy and Procedure

Based on Professional Thinking and Law

Training

Policies must be trained

Supervision

Catch an officer doing something right

Performance Management

Commitment to selection followed by Performance Evaluation

Review and Revision

Constant review of what is happening within the agency.

Legal Counsel and Updates

Weak Link but essential

Do you find by a preponderance of the evidence that Sheriff Hodge and Whitley County's training program was inadequate to train volunteer deputies to carry out their duties or that they failed to adequately supervise the volunteer deputies?

Yes

No

Do you find by a preponderance of the evidence that the failure to train or supervise was part of a pattern, or policy, or custom of Whitley County and

Sheriff Hodge?

Yes

No

Do you find by a preponderance of the evidence that the failure to train or supervise amounted to deliberate indifference to the fact that inaction would result in a violation of a person's constitutional rights?

Yes

No

What sum of money do you believe from the evidence will fairly and reasonably compensate the Plaintiff for such of the following damages you believe were sustained as a result of Sheriff Hodge and Whitley County's conduct?

- a. Physical pain and suffering (past, present, future): _____ \$ 1,650,000
 - b. Emotional and mental harm (past, present, future): _____ \$ 1,650,000
 - c. Past lost wages or income: _____ \$ 183,300
 - d. Future impairment to labor and earn money: _____ \$ 2,512,500
 - e. Past medical expenses: _____ \$ 103,150
 - f. Future medical expenses: _____ \$ 184,500
- TOTAL: _____ \$ 6,282,400

Bad News 1st Prescriptions

- 9th Cir. Wakefield v. Doe 1999:

We therefore hold that the state must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. A state's failure to provide medication sufficient to cover this transitional period amounts to an abdication of its responsibility to provide medical care to those, who by reason of incarceration, are unable to provide for their own medical needs.



Foundation Case

Bell v. Wolfish

Conditions of Confinement

Pre-Trial Detainees

Strip Search

Maybe Some Good News

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Rules

Principle:

Arrestees who are detained in the general jail population can constitutionally be subjected to a strip search only if the search is supported by reasonable suspicion that such a search will reveal weapons or contraband

- Manner of search:
 - Degree of privacy
 - Searcher of same sex
 - Hygienic conditions
 - Physical contact
 - Professional manner

6th Circuit-still stuck with Masters v. Crouch

FOR NOW!

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New cases

- Powell v. Barratt- 11th Circuit
- Bull v. San Francisco County- 9th Circuit
- Florence v. Bd. Of Chosen Freeholders 3rd Circ.
Appealed to U.S. Supreme Court
- QUESTION PRESENTED:
 - **Whether the Fourth Amendment permits a jail to conduct a suspicionless strip search of every individual arrested for any minor offense no matter what the circumstances.**



- The arrestee was arrested and charged with a non-indictable variety of civil contempt. The arrestee was subjected to strip and visual body-cavity searches by corrections officers at the jail and the correctional facility. The strip search policies required arrestees to undress completely and submit to a visual observation of their naked bodies before taking a supervised shower. The appellate court determined that the strip search procedures at the jail and the correctional facility were reasonable and did not violate the [Fourth Amendment](#) because, inter alia, (1) the security interest in preventing smuggling at the time of intake is as strong as the interest in preventing smuggling after the contact visits at issue in the Supreme Court's Bell decision, (2) the scope, manner, and place of these searches were similar to or less intrusive than those in Bell, (3) the jails were not required to produce a record of a past smuggling problem, (4) strip searches at the time of intake had significant deterrent value, (5) the decision not to rely exclusively on the Body Orifice Scanning System was not unreasonable, and (6) subjecting all arrestees to the same policy promoted equal treatment.



From the beginning

Intake...



Issues

- Medical Clearance
- Psychological/Suicide Clearance
- Incarceration Authorization
- Admission Procedures
- Inmate Searches



Medical Clearance

- Intake Screening Method for injury illness
 - Screen Prisoner
 - Screen Delivery Officer
- Policy should address refusal of custody, if and when allowed
- Documentation of injury or illness



Jail Suicides/In-Custody Suicide

- Key- Foreseeability
- Key- Training for Recognition
- Key- Prior Suicide Attempts
- Key- Facilities
- Attempts to Revive/Rescue



Coleman v. St. Francis County Sheriff, slip op. No. 03-1611
(8th Cir. 2003)

- Captain investigating Coleman for misdemeanors
- Several reports that he's suicidal
- Coleman reports that he had contemplated suicide
- Placed in difficult to monitor drunk tank and given a bed sheet
- Suicide by hanging



Elements

- Officer must know that detainee presented a substantial risk of suicide
- Officer failed to respond REASONABLY to that risk
- Not enough to show that risk was obvious- instead must show risk was known
- Coleman case-goes to jury trial-jury may believe that Captain knew of risk and failed to respond reasonably



Medical Needs

- *Estelle v. Gamble*, 429 U.S. 97 (1976).
- With medical needs:
 - Plaintiff must establish that the police were deliberately indifferent to the serious medical needs of a person in custody.
 - Note, this is one area where the duty to protect is an affirmative obligation of the police since the person in custody has no way to provide for themselves while deprived of liberty.



2 Part Test

1. Was Injury or Illness a Serious Medical Need?
(Objective Test)
2. Were Agency Personnel Deliberately Indifferent to the serious medical need?
(Subjective Test)



Carter v. Detroit, 2011 U.S. App. LEXIS 9717 (6th Cir. 2011)

- **Tori Carter:** “I haven’t taken heart meds in 3 days.”
 - Stated she was having chest pains
 - Locked up after having fight with sister
 - Information forwarded to supervisor Hollins
 - No medical Attention
 - Heart attack and died
 - Expert: May have been saved with proper and timely treatment



Held...

- Tori Carter showed classic symptoms of heart attack
- Sufficiently serious that action should have been taken
- No Medical Attention Given or summoned
- Evidence that supervisor “disregarded a substantial risk of serious harm”



Policy Considerations...

- Who will make decisions and are they trained
- Medical Decisions-qualified medical personnel
- Medical decisions not compromised by security concerns
- Medical Employees must meet institutional security requirements pre-hire.
- Documentation
- HIPAA
- Training of all.



Standards of Care

- Sentenced Prisoners- 8th Amendment- Estelle
- Pre-Trial Detainees-14th Amendment-
 - See- **Powers v. County of Lorain, 2011 FED App. 0047N (6th Cir. 2011)**



Language from Powers

- Pre-trial detainees have rights to adequate medical treatment analogous to those of prisoners; however, these rights stem from the Due Process clause of the Fourteenth Amendment instead of the Eighth Amendment. *City of Revere v. Massachusetts General Hosp.*, 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983) ("[T]he due process rights of a [pre-trial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner."). Detainees have a due process right to medical care even when injuries are self-inflicted.



Powers

- Medically screened by nurse
- Later wants nurse (heart rate 118) and complaints of chest pains
- Nurse: “Tell Oliver to relax”
- Agency Policy: Complaints of Chest Pains, pulse over 100 call EMS
- Policy provision got agency off hook-not so for employees





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Series 1899.

To Captains of Police:-

You will instruct the officers under your command, whenever a prisoner is brought to the station unconscious or any prisoner in the station is found in an unconscious condition and cannot speak and remains in that condition at the expiration of one hour, the Police Surgeon must be called at once.

William R. Baker
Chief of Police.

Use of Force

- 4th Amendment- Objective Reasonableness
- 14th Amendment-Good faith application
- 8th Amendment Cruel and Unusual



14th Amendment

- Brother v. Klevenhagen 28.F.3d 452 (5th 1994).
 - Officer's use of force must have inflicted unnecessary and wanton pain and suffering and must not have been applied in a good faith effort to maintain or restore order



Cruel and Unusual Punishment

- Hudson v. McMillian, 503 U.S. 1 (1992)
- Even a minor use of force that is not for the purpose of maintaining order and discipline and is not in good faith may constitute a constitutional violation
- Prisoner assaulted while shackled but no significant injury.



11th Circuit

- **Harris v. Chapman** 97 F.3d 499 (11th Cir. 1996).
 - “Was force applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. Absence of serious injury alone is insufficient to dismiss a prisoner’s 8th Amendment Claim.”



Use of Force/8th Considerations...

1. What was the need for force?
2. Proportionality-How much force was used in relation to the need?
3. What was the extent of the injury? (Note-Hudson v. McMillian)

Note: Courts tend to apply the 8th Amendment standards to pre-trial detainees.



Riots

Whitley v. Albers-Guard being held hostage-a prisoner who is trying to aid officials is shot.

Questions:

1. Was there a malicious and sadistic infliction of pain or was action taken in good faith to maintain or restore order?



Tasers



Issues...

- Research
- Force Continuum
- Pepper Spray
- Accidents
- Abuses



Segregation for Security



Johnson v. California, 125 S.Ct. 1141 2011

- At initial entry prisoners put in cell with inmate of same race.
- Prevent violence by racial gangs
- Inmates challenge
- Court Strict Scrutiny (Equal Protection) versus rational basis
- Policy may not survive strict scrutiny-case remanded.



Classification and its impact on Liability

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Third Party Harm

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Farmer v. Brennan, 511 U.S. 825 (1994).

- Transsexual rape and beating
- Claim against jail officials
- Court applied a heightened standard
- Must have knowledge of Risk and
- Fail to Act



Cases...

Usual focus is inmate on inmate assault and allegation that the two should not have been together

Guzman v. Sheahan, 495 F.3d 852 (7th Cir. 2007)- 2 allegations- CO did not respond quick enough-she did act pursuant to policy-don't leave her station without backup

Allegation 2-Reclassification scheme was not followed.



- Proving that an officer was deliberately indifferent to the safety of a detainee requires "more than a showing of negligent or even grossly negligent behavior." The officer must have acted with "the equivalent of criminal recklessness." *Id.* Prison officials who had actual awareness of a substantial risk to the health or safety of an inmate incur no liability if they "responded reasonably to the risk, even if the harm ultimately was not averted, because in that case it cannot be said that they were deliberately indifferent." The "mere failure of the prison official to choose the best course of action does not amount to a constitutional violation."

Welch v. Grayson County, 2007 U.S. Dist. LEXIS 29910 (WD Ky. 2007)

- The [Eighth Amendment](#) imposes a duty on officials to provide "humane conditions of confinement" which includes taking "reasonable measures to guarantee the safety of the inmates.
- Deliberate Indifference to a known risk



Identification Process

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Fairley v. City of Long Beach, 281 F.3d 913 (9th Cir. 2002)

- The case of twin brothers
- John Fairley was held for 12 days in jail due to an active warrant for his brother. His brother was 66 lbs. heavier.
- Officers informed booking sergeant that Fairley was a twin. Fairley protested that the warrant for his brother.
- Booking was completed w/out fingerprinting, but on physical description alone.
- IA investigation-All policies complied with.



Policy-Lack of Policy

- Plaintiff had a liberty interest in being free from this 12 day detention
- Department failed to have a policy in place that would provide a procedural safeguard to verify warrants.
- Finding that policies were complied with, and failure to put new procedures in place following this event, sufficiently established city's procedure.



Restraint

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Cruz v. Laramie, 239 F.3d 1183 (10th Cir. 2001)

- Naked Man running around acting irrational.
- Cruz is naked and non-compliant.
- Officers called ambulance
- Cruz began to pass by officers, he is wrestled to the ground and handcuffed face-down.
- Placed in either a hobble or a hog-tie
- Cruz “calmed markedly” = DRT



Conclusions

“Officers may not apply this technique when an individual’s diminished capacity is apparent. The diminished capacity might result from severe intoxication, the influence of controlled substances, a discernible mental condition, or any other condition apparent to the officers at the time, which would make the application of a hog-tie restraint likely to result in any significant risk to the individual’s health or well-being.”



Maximal Restraint

- Face Down Restraint
- Compression Asphyxia



Sudden Custody Death

- Do not remain on top of subject after the subject has been restrained.
- Turn the subject on side or in an upright position of comfort.
- Maintain constant observation.
- Render first-aid immediately if physical distress is detected at the level for which officer has been trained and call for emergency services.
- Always notify booking/detention officers of violent struggle any use of force involving pepper-spray; lateral vascular neck restraints; or maximal restraint techniques.



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