

Understanding the Liabilities of Running a Jail and Mitigating the Risks

2022 COUNTY BOARD WORKSHOP

KEARNEY, NE

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Liability – Defined

-the state of being responsible for something, especially by law.

-a thing for which someone is responsible, especially a debt or financial obligation.

-A person or thing whose presence or behavior is likely to cause embarrassment or put one at a disadvantage.

What are the Goals for the Jail related to Liability?

No Liability

No Litigation

Jail Standards Compliance

Defendable Policy and Procedure

Well Trained Staff

Full Staffing

Excellent Documentation

So what are some current Issues that are creating liability for Jails?

Jail Non-Compliance Areas

Currently

- Data
- Training
- Fire Code

Down the Road

- Telephone Standards
- Restraint of Pregnant Inmates
- Over-crowding

So what areas can create the most liability for us right now?

Staffing

Staffing Obligation?

Staffing Analysis for Chapter 15 Jails

Options if you can't hire staff

Do not run below minimum staffing levels!

Medical Issues

Provision of Medication

- Inmates must have **Active Prescriptions** provided **As Prescribed...**
 - ... until a **Qualified Medical Authority** has changed the order.
- Once the prescription has been issued **it belongs to the name on the label.**

Estelle v. Gamble (1976) 429 U.S. 97.

The Supreme Court decided that the Eighth Amendment of the United States Constitution applies when prison officials manifest “deliberate indifference to serious medical needs of prisoners.” This means that two of the requirements necessary for an Eighth Amendment claim are:

“Deliberate indifference” – intentionally failing to provide medical care that would prevent suffering; and

“Serious medical needs” – a serious injury or illness, including a serious physical health condition, dental condition, mental health condition (particularly to prevent inmate suicide), a medical emergency, or an expected future medical problem.

Estelle v. Gamble (1976) 429 U.S. 97.

Some examples of failure to provide medical care giving rise to an Eighth Amendment claim include the following:

- Withholding medical care on purpose
- Delaying treatment with the intent to harm the inmate
- Knowingly interfering with treatment (not carrying out medical orders).

Medical Issues

Fitness for Confinement

- If you were on the witness stand and the plaintiff's attorney asked you if you had any doubts or concerns about whether the inmate had any physical or mental health issues could you state honestly that there were no concerns.
- Pass the Liability on to a professional who is trained to assess and diagnose.
- Train your staff to identify diagnostic behaviors (signs and symptoms) and to document such.
- When in doubt send them out.

- **NEVER DIAGNOSE!**

Fitness for Confinement

Unconscious

Having or Had Recent Convulsions

Obvious Symptoms of Serious Illness

Broken Bones

Pregnant Women?

Apparent Mental Health Issues that present risk to self or others

No Meds for: Diabetes, Epilepsy, Heart Issues, Asthma, Psychotropics, HIV

Severely intoxicated and non responsive

In a car accident

Medical Issues

Substance Use Disorder & Medically Managed Withdrawal

- NO Blanket Opioid Policies
- Do you provide FDA approved medications for the treatment of Opioid Use Disorder (i.e. Medication Assisted Treatment "MAT"):
 - <https://www.sheriffs.org/jail-based-mat>
- Do you have protocols in place for managing substance use withdrawal?
<https://bja.ojp.gov/doc/managing-substance-withdrawal-in-jails.pdf>
- The Comprehensive Opioid, Stimulant, and Substance Abuse Program's (COSSAP) in partnership with NCCHC will be releasing the Substance Withdrawal Management Guidelines for Jail Administrators in the upcoming months.

Objective “Unreasonableness” Considerations in Use of Force/ Lombardo v. City of St. Louis, 594 U.S. ____ (2021)

1. **Threat perceived** by a reasonable officer; (subjective)
2. Whether the inmate poses an **immediate threat** to the safety of the officers or others;
3. **Need for use of force** as the appropriate; response to the perceived threat; (Objective)
4. **Amount of force used** in relation to the need for force;
5. **Effort(s) made to temper** the severity of the forceful response;
6. **Extent of the injury** to the inmate (one factor to be considered);
7. **Severity** of the security problem at issue;
8. Whether the inmate was **actively resisting** and
9. The **legitimate governmental interest** in managing the facility (for the force)

New Technology

Scanning PERSONAL Inmate Mail vs. Delivering the Original

- LGI? (Legal and Governmental Infrastructure)
- Rationale? Turner v. Safley
- Property Interest.....Save the original mail
- If too much property...
 - Make arrangements to have it picked up... shipped out... or destroyed.

Avoiding Liability

- Do your job
- Professionalism and Respect
- Know the law
- Articulate and document your rationale for all decisions made
- Reports
 - Your narrative should define your rationale
 - **DO NOT SIGN OFF UNLESS THE RATIONALE IS ARTICULATED AND COMPLETE!**
- Do After-Incident Reviews
 - Briefing; Training; Policy; Disciplinary?
- Training and Testing; Demonstrate Competence
- Lead by Example: Mentor
- Is your Policy and Procedure supporting your Mission

Support your Jail Leadership & Staff



Thanks for your time!

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Omag.org – Managing Jail Liability