

Legal Issues in Today's Jails

Training: Civil Liability

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The information contained herein is to be used solely for training purposes and shall not be construed as legal advice. Users of these materials should consult legal counsel to determine how the law of their individual jurisdiction affect the application of these materials to their individual circumstances. Legal requirements may vary in individual jurisdictions and may be modified by new rulings.

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I May Want To, But I Can't 😊

Give Legal Advice

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"Our jails are a mirror of
our community.
If it's happening in our
community,
it's happening in our jails."



Carrie Hill,
National Sheriffs Association

Learn more about Jail Operations, visit at
<http://bit.ly/JCH-NCJO>

Civil Liability

- **Proactive Steps** to Minimize Risk
 - 42 USC 1983: Civil Rights Act of 1871
- **Know the Law**
 - At least *clearly established rights*
 - Act in an *objectively reasonable manner*

YOUR RISK MANAGEMENT TOOL KIT

INCLUDES: Know The Law

- **Constitutional Standards**
 - **1st Amendment (Turner v. Safley)**
 - **Speech** (Mail; Telephone; Visitation; Press)
 - **Religion** : RLUIPA (Holt v. Hobbs)
 - **4th Amendment** (Florence v. Board of Chosen Freeholders; Turner v. Safley; Bell v. Wolfish)
 - Search
 - **6th Amendment** (Lewis v. Casey)
 - Access to Courts and Counsel
 - **8th Amendment**
 - **Medical/Mental Health Care** (Estelle v. Gamble)
 - **Duty to Protect** (Assaults/In-Custody Deaths) (Farmer v. Brennan)
 - **Conditions of Confinement** (Wilson v. Seiter and Farmer v. Brennan)
 - **Use of Force** (Kingsley v. Hendrickson)

YOUR RISK MANAGEMENT TOOL KIT INCLUDES: Know The Law

- **Legislation:**
 - **Affordable Care Act of 2010 (ACA)**
 - **Americans With Disabilities Act of 1990, Title II (ADA II)**
 - **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**
 - **Prison Litigation Reform Act of 1996: (PLRA)**
 - **Prison Rape Elimination Act of 2003 (PREA)**
 - **Religious Land Use And Institutionalized Persons Act of 2000 (RLUIPA)**



**CUSTOM, POLICY OR
PRACTICE VS. ISOLATED
INCIDENT**

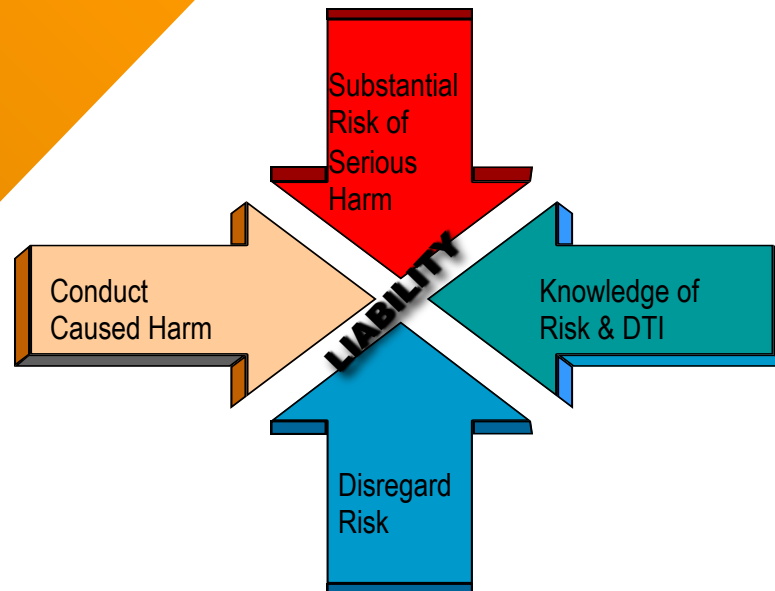
Personal Liability

- No liability exists under the doctrine of respondeat superior in claims brought under 42 U.S.C. § 1983.11
- For a municipality/county to be liable for the actions of its employees under Monell, the **plaintiff must show that the municipality adopted a policy, practice, or custom that was the moving force behind the constitutional violation.**
Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978),

Deliberate Indifference: Supervisor Liability

- **Starr v. Baca**, 652 F.3rd 1202 (9th Cir. 2011)(cert. denied)
- Supervisor OR Sheriff may be personally liable for damages **IF** it can be shown that he or she was deliberately indifferent to the rights of inmates under their care/control.

STANDARD



© 2000 **Farmer v. Brennan, 511 U.S. 825 (1994)** Hill

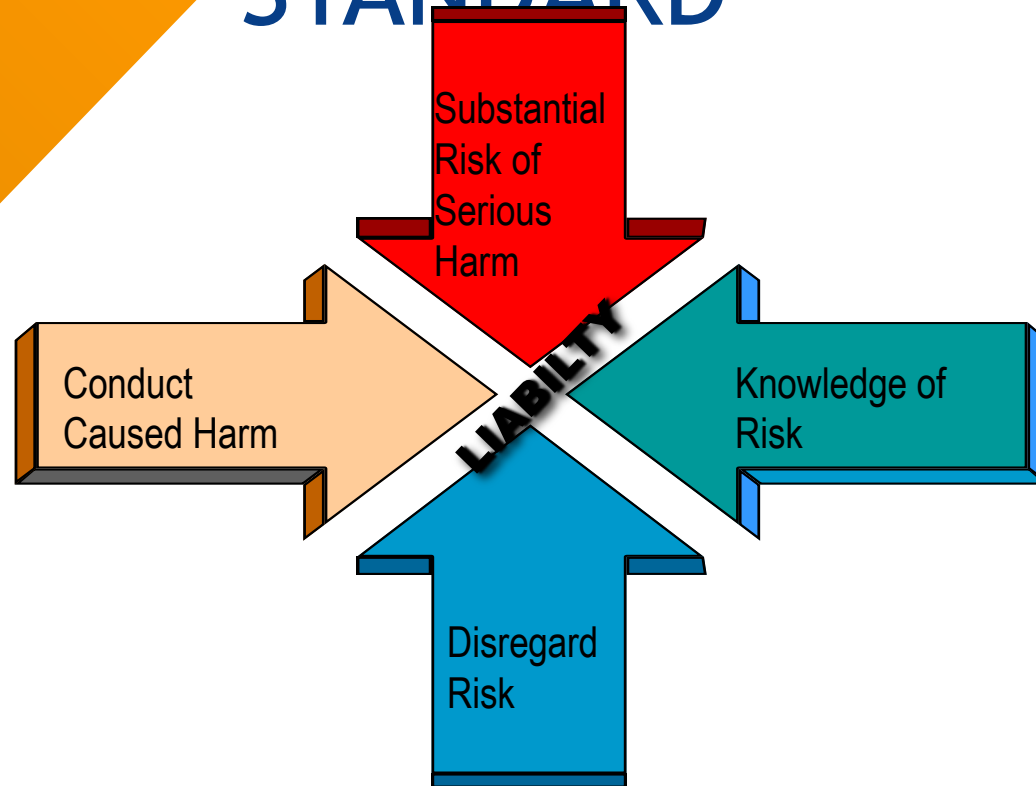
Del **Deliberate Indifference Test** rights reserved.

Baca: Personal Liability Found

- Willis v. Baca: (Oct. 18 2013)
 - Baca personally liable for actions of his deputies who allegedly, severely beat inmate Willis (punched, kicked, multiple taser applications, and being struck in the ankle with a flashlight)
 - Head injuries and fractures were the resulting injuries
 - Plaintiff's verdict for \$125,000 in compensatory damages. They stipulated to another \$40,000 in punitive damages with Baca being liable for \$100,000 of the judgment
 - “malicious, oppressive or in reckless disregard” of Willis’ rights
 - Defendants appealed claiming the use of force was “brought on by the inmate”

The

STANDARD



Custom, Policy, Practice vs. Isolated Incident

- Porro v. Barnes, 624 F.3d 1322 (10th Cir. 2010)
 - In general, force inspired by malice, or by unwise, excessive zeal amounting to an abuse of official power that shocks the conscience.
 - Inmate was acting in a disruptive manner in his cell, destroying parts of it.
 - CERT removed him from the booking area and placed him in the restraint chair
 - It was the events that happened AFTER this that brought the issue to the forefront.
 - Once restrained in the restraint chair, the Taser was applied three times.

Custom, Policy, Practice vs. Isolated Incident

- First, the Court entered judgment for Mr. Porro against Deputy Lovett and awarded damages of \$100,000.
 - The court found, among other things, that Deputy Lovett violated county rules prohibiting the use of a Taser against a restrained detainee who presented no threat of harm, and that the force Lovett applied was constitutionally excessive.
- Second, the district court granted summary judgment to Messrs. Barnes and Bryant.
 - The court held that Mr. Porro had come forward with no more than “supposition, conjecture and innuendo” to suggest Mr. Barnes's personal involvement or the county's culpability.
 - The court added that all the evidence adduced before it suggested that Mr. Lovett's tasing was no **“more than a random act or isolated event which occurred outside of the policies and procedures implemented by Defendant Barnes.”**

After Incident Reviews: Lessons Learned

- Isolated Incident (own it.....)
- After incident reviews (informal)
 - Root Cause Analysis
- Looking “forward”/critical to avoid allegations of “custom, policy or practice”
 - Briefing-Training-Policy Changes-Discipline IF Warranted
- “Self Audit” is a strong defense to ward off allegations of deliberate indifference

Federal jury awards
Port Arthur man more
than \$16M over jail
beating

Liability for Transport Officer's Sexual Misconduct

- **Franklin v. Tatum**, 2015 WL 5520846 (11th Cir. 2015)
 - Sexual abuse allegations by female detainees of a Calhoun County, Florida employee
 1. An inmate warned of the deputies sexual demands and noting was alleged to have been done.
 2. Lack of policies on the housing and transferring of female inmates is found to possibly support a finding of deliberate indifference;
 3. Monitoring was deficient and could be a causal link to the sexual misconduct; and
 4. Failure to train theory-”**sexual assault on a prisoner is so beyond the conduct that a reasonable officer would consider acceptable that we know of no requirement that a sheriff train his officers against it.**”

Denver Sheriff's Office:

- **Event** Occurred in July of 2018
- Diana Sanchez gave birth to a baby – alone while the nurse watched and the Sgt. did nothing to expedite her transport to the hospital.
- **Sued:** The suit alleges that instead of “ensuring that Ms. Sanchez was able to give birth in a safe and sanitary medical setting,” nurses and deputies “callously made her labor alone for hours,” forcing her to endure a “horrific experience.”
- **Litigation Hold-Video** was Just Released

<https://youtu.be/OJd6ozZmTE>

- “We empathize with anyone who is in jail while pregnant including Ms. Sanchez,” the statement said. The sheriff department noted that at the time of the birth, Sanchez was in the jail’s medical unit under the care of Denver Health staff.

Sheriff Resigned (9/11)

- Pressure came because the investigation concluded deputies “took the appropriate actions under the circumstances and followed the relevant policies and procedures.”
- “To make sure nothing like this happens again, the Denver Sheriff Department has changed its policies to ensure that pregnant inmates who are in any stage of labor are now transported immediately to the hospital.”

Avoiding Deliberate Indifference

- The law does not require “perfection” but requires that you are not “deliberately indifferent” to it.
 - Do something! Gather the requisite knowledge so that you are aware and take corrective action if necessary.

Avoiding Liability

- DO YOUR JOB
- PROFESSIONALISM AND RESPECT
- KNOW THE LAW
- ARTICULATE YOUR RATIONALE FOR ALL DECISIONS MADE
- REPORTS
 - NARRATIVE-RATIONALE
 - **DO NOT SIGN OFF UNLESS THE RATIONALE IS ARTICULATED AND COMPLETE**
- AFTER INCIDENT REVIEWS
 - BRIEFING; TRAINING; POLICY; DISCIPLINARY?
- TRAINING/TESTING
- LEAD BY EXAMPLE: MENTOR

Acknowledgements

- Americans For Enforcement Law Enforcement (AELE)
- The American Jail Association (AJA)
- Civic Research Institute (Corrections Managers' Report, Correctional Law Reporter, Correctional Mental Health Report)
- Gary W. DeLand (my mentor) for use of his training outlines, articles and infinite knowledge.
- National Institute of Corrections (NIC) Jails Division
- National Sheriffs' Association (NSA) - Legal Affairs Committee
- My Peers and Colleagues Who Continue to Inspire and Challenge Me.

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