

JAIL BULLETIN

NUMBER 11

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The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail inservice training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

CIVIL LIABILITY IN JAIL OPERATIONS

"To those incarcerated individuals
Who have refused to do time,
Requiring time to do them.
I deliver into your hands
A weapon
That knows no boundaries
-Except-
That which you impose upon it."

The above quote is taken from the new edition of the Prisoners' Self-Help Litigation Manual. This 684 page book is full of easy to understand information on how inmates can sue their jail or prison. Another book, A Primer For Jail Litigators, is published by the American Civil Liberties Union National Jail Project. The primer provides step by step information on how to sue a jail. Both books demonstrate the contemporary trend for inmates to use lawsuits as a vehicle to bring about improvements in jail conditions. This issue of the "Jail Bulletin" is intended to review some of the legal issues covered in the initial jail operations training course.

UNCONSTITUTIONAL JAILS--YOU CAN BE HELD LIABLE

Inmates can openly challenge their conditions of confinement in the federal courts by filing lawsuits against county officials responsible for operating the local jail under Title 42, Section 1983 of the United States Code. A little over fifteen years ago there were only around 200 of these civil rights lawsuits being filed in the federal courts annually. Today, one out of seven lawsuits filed is a prisoner rights "1983 action."

As a result of all this increase in litigation, one out of three jails in the nation are presently under court order or have lawsuits pending under Section 1983.

Title 42, Section 1983, has three important components.

- Any person acting under color of law
- Who violates the constitutional rights of another
Is liable to that person

Challenges to prison and jail conditions and treatment are based on the following amendments to the U. S. Constitution:

FIRST AMENDMENT--Guarantees freedom of religion and access to mail, visitation and library.

SIXTH AMENDMENT--Guarantees prisoner due process rights, including right to legal representation.

EIGHTH AMENDMENT--Bans use of cruel and unusual punishment.

FOURTEENTH AMENDMENT--Guarantees equal protection under the law and, by doing so, extends all other amendments to the states.

As a consequence of this increase in court involvement over the past fifteen years, a comprehensive body of case law has evolved which defines the minimum acceptable conditions of confinement and treatment of prisoners. These cases have touched upon nearly every aspect of running a jail, including the following:

- o staffing
- o access to courts and counsel
- o mail and telephone
- o library and access to legal materials
- o religion
- o visitation and media visits
- o medical care
- o exercise and recreation
- o food service
- o educational opportunities
- o counseling
- o classification and segregation
- o discipline, due process, and grievance procedures
- o living conditions (physical plant)

The following are some of the physical plant conditions which have been held to be unconstitutional:

- o Inadequate living space - the size of the cells and dayrooms, along with the space actually available to each prisoner;

constitute "gross negligence" or "deliberate indifference" to a victim's constitutional rights. Owens v. Hass (Ct. App. 1979).

- o Negligent Supervision - The administration is personally liable if he/she
 - 1) Had a duty to supervise/
 - 2) Knew or should have known of;
 - 3) A pattern of gross abuse;
 - 4) And did nothing
- o Negligent Direction - Failure to provide written policy and procedures.
- o Negligent Hiring - Hiring staff that are not qualified for the job.
- o Negligent Retention - Keeping people on the job when they should be fired.
- o Negligent Assignment - Assigning staff to positions (usually supervisory) that they do not have the ability or skills to handle.

And These Arguments Don't Work Either...

BUDGETARY. A common response county officials give when confronted with a lawsuit against their jail is, "We don't have the funds to build and operate a constitutional jail" or "Go ahead and sue -- you can't get blood out of a turnip." To the former statement the courts have responded, "If the state (county) cannot obtain the resources to detain persons awaiting trial in accordance with minimum constitutional standards, then the state (county) will simply not be permitted to detain such persons." Hamilton v. Love (Dist. Ct. 1971).

In response to the latter statement, the courts have gone so far as to jail public officials for contempt and ordering their property seized to satisfy the judgement.

"I DIDN'T KNOW" DEFENSE. Public officials may argue that they just "didn't know" a constitutional right was being violated by housing inmates in inadequate facilities. As discussed earlier, public officials have an affirmative duty to know clearly established rights and to provide and maintain facilities which do not violate them.

GOOD FAITH DEFENSE FOR THE GOVERNMENTAL UNIT. A county cannot claim a "good faith" defense for a judgement against a public official in his or her official capacity. Brandon v. Holt (1985).

- o Inadequate ventilation - availability of fresh or purified air;
- o Inadequate lighting and heating - may include access to natural light as well as artificial lighting;
- o Inadequate plumbing - including broken toilets, sinks, or showers;
- o Fire code violations;
- o Lack of exercise space;
- o Lack of confidential interview areas;
- o Inadequate medical facilities;
- o Poor sanitation - due to age/neglect of facilities.

In determining whether jail conditions are unconstitutional, a court does not look at any single deficiency, such as inadequate square footage. Rather, the court looks at the "totality of circumstances" or the total combination of deficiencies which exist in the jail. Additionally, the constitutionality of conditions may be a function of the inmates' length of stay. The same conditions which the court thinks an inmate could tolerate for a few days might not be acceptable for 30 days, 60 days, or longer.

County Officials' Liability

County officials have an AFFIRMATIVE DUTY to comply with constitutional requirements which have been set forth by these court decisions or they may be held liable. The law presumes every public official knows constitutional law and is required to take positive steps to discharge that duty--to see that the jail is funded and operated in a manner which meets these requirements.

If a public official is held liable in his or her OFFICIAL CAPACITY, the county (taxpayers) must pay the damages and attorney's fees.

A public official may also be held liable as a private individual. Any PERSONAL LIABILITY for damages and attorney's fees may, or may not, be paid by the county. If not, it comes out of that official's own pocket.

Vicarious Liability: The Jail Administrator's Nightmare

The jail administrator can be held liable for the actions of his/her subordinates in the following ways:

- o Negligent Training - The administrator's failure to institute proper training programs is so severe as to

Some Horror Stories

The costs of becoming entangled in jail litigation can be astounding:

\$2,000,000 - contempt fines issued against county commissioners who failed to comply with a court order to reduce the population at their county jail. (Mobile County Jail Inmates v. Purvis, 581 F. Supp 222 (S.D. Ala, 1984)).

\$576,845 - awarded to a man who was sexually assaulted by three other men in a drunk tank at a jail. (Lickliter v. Riverside County, reported in Jail and Prisoner Law Bulletin (March 1985)).

\$502,000 - county liable for failure to train a deputy at a jail. (Condon v. Ventura County, U.S. Dist. Ct. (S.D. Cal. 1983)).

\$210,000 - county liable to inmates of county jail, which the court found was a "terrible facility" that "exceeded permissible constitutional limitations" because of overcrowding, poor sanitation, and under staffing. (McElveen v. County of Prince Williams, 725 F. 2nd 954 (4th Cir. 1984)).

And Then There Are the Attorney's Fees

Another federal statute, Section 1988 of Title 42 USC, provides that the "prevailing party may receive reasonable attorney's fees" as part of the costs to be paid by the losing party. These costs alone can be staggering--

Ruiz v. Estelle, Ct. App. 1983 (\$1.6 million)

Ramos v. Lamm, Dist. Ct. 1979, Ct. App. 1983 (\$800,000)

Cherco v. Sonoma County, 1985, over \$2,000,000 in combined attorney's fees.

How Can Public Officials Reduce Their Chances of Being Successfully Sued?

If a public official suspects that the local jail might not pass constitutional muster, the best way to avoid liability is to do something before the lawsuit is filed. Officials and/or the county may be held liable for at least the plaintiff's attorney fees if they wait until after the lawsuit is filed to take action. A pro-active plan by the county would include:

1. Evaluation of the jail - including staffing, operations, and the physical plant. Jail Standards inspection reports may be helpful here.

2. Determination of what changes need to be made - this could include new construction, remodeling, hiring more staff, changing policies, implementing new programs, or any combination of these.
3. Develop a plan to correct the deficiencies - secure resources, set the timetable, and agree on the course of action to be taken.
4. Implementation of the plan - Initiate construction, change policies, make changes identified in the plan.

If you wait until after you get sued, you will make the changes anyway, but you'll also be liable for attorney's fees and possibly other damages. Also, if you wait, you'll probably lose a lot of control over what changes are made and how they are implemented.

What About Standards?

A lot of organizations have established standards for jails. Some include:

- American Correctional Association
- National Sheriffs' Association
- American Bar Association
- American Medical Association
- American Public Health Association

Even the United Nations has set standards for jails. While these are ADVISORY, they are useful in interpreting what the courts are determining to be constitutional on various jail issues.

Other standards are MANDATORY. Standards which most are aware of include:

- Life Safety Codes
- Building Codes
- Nebraska Jail Standards

The Nebraska Jail Standards are regulations set by the state which have the force and effect of law. Failure to comply with the Jail Standards can result in the state taking action to close your jail. The exercise of state authority over the county in this area, however, isn't the purpose of the Standards. The Standards have been established to help reduce the county's chances of being successfully sued for violation of inmates' constitutional rights. The Standards, in the judgement of the Jail Standards Board, reflect what is minimally required for the county to operate a jail according to the current state of the law. While they don't guarantee constitutionality, they do place compliant counties in a much stronger position to defend against challenges against their jail.

Also, the liability issue extends to the state's responsibility to set Standards, inspect facilities for compliance, and enforce compliance where necessary. In several other states, the standards-setting agency was successfully sued for failure to carry out this responsibility. As a result, the plaintiff's were able to get the court to assume jurisdiction over all the jails in the state, rather than suing just one jail at a time.

--Material adapted from the
National Institute of Corrections
PONI Lesson Plans

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

SUBJECT: CIVIL LIABILITY

NAME _____

DATE _____

1. The eighth amendment to the Constitution guarantees:

2. List the three components of Title 42, Section 1983 of the United States Code.

3. The argument that a public official "didn't know" a constitutional right was being violated is a valid defense recognized by the federal courts.

TRUE

FALSE

4. List the four steps of a pro-active plan to improve a jail.

5. American Correctional Association Standards are:

a. Advisory

b. Mandatory

CREDIT: 1/2 hour credit for jail inservice training requirement

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EVALUATE THE JAIL

DETERMINE WHAT CHANGES NEED TO BE MADE

DEVELOP A PLAN TO CORRECT THE DEFICIENCIES

IMPLEMENT THE PLAN

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