



# Missouri Sheriffs' Association – New Sheriffs' Institute National Institute for Jail Operations

## Jail Policy and Procedure Development

December 10, 2020

## Instructor:

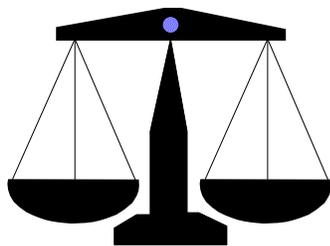
**Tate McCotter, NCCE, CJE**  
Executive Director  
National Institute for Jail Operations  
Tel: 801-810-5245  
Email: [tmccotter@jailtraining.org](mailto:tmccotter@jailtraining.org)  
[www.jailtraining.org](http://www.jailtraining.org)



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## Statutory Duties and Responsibilities.

### QUALIFIED IMMUNITY.



Qualified immunity, good-faith defense depends on **knowing** and **complying** with **clearly established law**. Whether you know the law or not, you are responsible to uphold it.

- **Harlow v. Fitzgerald**, 457 U.S. 800 (1982).

### PROACTIVE JAIL MANAGEMENT. Proactive v Reactive Approach

- Q. How much time do you and your jail staff spend researching current corrections case law?
- Q. Where do your policies and procedures come from? Are they current? Are they defensible?
- Q. If you were an inmate housed in your jail, what area do you first think of that is the highest liability/risk?
- Q. What have your jail done about being more legally “defensible?”
- Q. When is the last time your jail conducted a self-audit (not by an outside agency?)
- Q. How do you document compliance to what the law requires?

**You are the expert of your facility!**



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### LEGAL-BASED v BEST PRACTICES.

What is a "Best Practice?"

Who determines what is considered "best?"

Best Practices reflect the goals, objectives and priorities of the organization that created them.

#### REFERENCES & EXAMPLES:

DOJ PREA Standards

ICE Standards

*"[R]eliance on . . . correctional standards issued by various groups is misplaced . . . And while the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question."*

- Bell v. Wolfish, 441 U.S. 520, 543 n.27 (1979).

#### "Legal- Based"

What the law requires

- Constitutional / Supreme Court
- Federal Laws and Acts
- 8<sup>th</sup> Circuit Court
- MO State Laws and Statutes
- One size DOES NOT fit all!

#### "Best Practices"

What the organization requires

- Subjective
- Not recognized by Courts
- Often supersedes the law
- Fails to address what the law requires

**MISSOURI STATUTES.** The state of Missouri has specific statutes, compiled laws, and annotated code governing the administration and operations of jails.

- **Role of Sheriff:** "Sheriffs to be jailers... exception Clay County" - MRS 221.020
- **Open Records:** Missouri Open Records statutes - MRS 610.100
- **Officer Training:** MRS 590.050 Continuing education requirements; MCJS 7.6: In-Service Training
- **Jail / General Responsibilities:** Examples
  - **Strip searches** – MRS 544.193 (limitations exceed allowances by Supreme Court)
  - **Food services/dietician** – MRS 221.060; 1-MCJS-4A-01
  - **Health care** – MRS 221.120
  - **Separation of prisoners (Gender)** – MRS 221.050

**INMATE RIGHTS & LIABILITY.** While this list is not inclusive of all laws governing inmate rates, the following should serve as a reference for guiding policy, procedure and training.

- **First Amendment:**
  - Communication – Mail, Visitation, Telephone
  - News / Media
  - Religion\* (note inmates can also file under RLUIPA)
  - Marriage



Turner v Safley. This case is paramount when justifying First Amendment policies and procedures.



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### Turner v Safley – Four Part Test

1. Is there a 'valid, rational connection' between the regulation and the legitimate governmental interest put forward to justify it? (If yes, burden shifts to inmate.)
  2. Are there alternative means of exercising the basic right that remain available to the inmate?
  3. The impact accommodation of the asserted right will have on officers and other inmates and on the allocation of prison resources? "Ripple Effect"
  4. The existence of obvious, easy alternatives-"exaggerated response" ("de minimis cost")
- **Prison Litigation Reform Act of 1995 (PLRA):** *US 42 U.S.C. 1997*
    - Court gives substantial weight to any adverse impact on public safety or the operation of a criminal justice system
    - Three strikes and out rule
    - All administrative remedies must ALL be exhausted
    - Filing fees established (attorney and inmate)
  - **4<sup>th</sup> Amendment:** (Bell v Wolfish; Turner v Safley)
    - Reasonable Searches (Florence)
  - **8<sup>th</sup> Amendment:** Cruel and Unusual Punishment
    - Medical / Mental Health Care (Estelle v Gamble)
    - Duty to Protect (Assaults / In-Custody Deaths)
    - Conditions of Confinement (Wilson v Seiter)
      - Shelter
      - Basic life necessities
      - Sanitation
      - Violence
      - Health and safety conditions
  - **14<sup>th</sup> Amendment:** *Wolff v. McDonnell, 418 U.S. 539, 554-555, 561 (1974)*
    - Due process claims
    - Inmate hearings

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g. food, clothing, shelter, *medical care*, and reasonable safety—it transgresses the substantive limits [of the Constitution]."

- *DeShaney v. Winnebago Co. Dep't of Social Services*, 489 U.S. 189, 198 (1989) (emphasis added).

### **8<sup>th</sup> Amendment Violations**

- Deliberate indifference
- Duty to Protect
- Conditions of confinement

Inmate suffered serious harm.

"It is equally well settled, however, that the Constitution does not permit inhumane conditions of confinement." - *Rhodes v Chapman*, 452 U.S. at 349

- Use of Force (*Whitley v Albers*; *Hudson v McMillian*, *Kinglsey v Hendrickson*)



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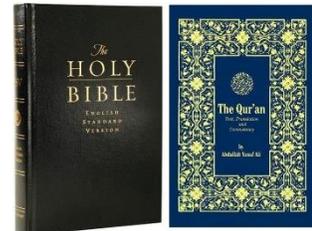
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- **Access to Courts and Counsel:** *Bounds v. Smith*, 430 U.S. 817 (1977); *Wolff v. McDonnell*, 418 U.S. 539 (1974).
  - Inmates have a right to access the courts and counsel
  - Habeas Corpus petitions
  - Civil rights actions (conditions of confinement)

However, access to courts and counsel doesn't mean they are entitled to a law library. Jails only must provide "meaningful access to the court." - *Lewis v. Casey*, 518 U.S. 343 (1996)  
Pro se inmates – how much is the jail required to do?

- **Religious Land Use and Institutionalized Persons Act (RLUIPA):** *Cutter v. Wilkinson*
  - Compelling governmental interest for policy/actions
  - Least restrictive means
  - Note that this is different than the 1<sup>st</sup> Amendment standard!
  - Diets, access to clergy, items, commissary, clothing



## Policy v. Procedure.

Policy and procedure vary in scope and purpose. Policy is the *what*. Procedure is the *how*. Model policy does not include procedure.

- Rationale.
- Compliance
- Annotation/Reference

### IMPORTANCE OF SUPERVISORS ENFORCING POLICY and PROCEDURE

Merely writing policy and procedures isn't sufficient. They must also be enforced!

**Smith v. City of Fontana**, 818 F.2d 1411, 1420 (CA9 1987), *cert. denied* 108 S.Ct. 311 (1987)  
(failure to enforce regulation created atmosphere of lawlessness).

There is no factor more important to:

- the avoidance of liability;
- the avoidance of staff misconduct;
- the upgrading of the agency's professional performance; and
- attainment of meeting constitutional requirements



Staff is the #1 asset of the jail. Administrators should limit discretion especially of line staff – to ensure compliance with constitutional and other legal requirements. Policies provide a way for administration to create consistency in daily operations and practices. However, if staff doesn't follow them exactly, that doesn't mean policies can be used against you.

- *Sandin v. Conner*, 115 S.Ct. 2293 (1995). (merely "guidelines" to follow)



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Policies should contain rationale so line staff can:

- know the reason behind the policy
- make better decisions generally
- explain in reports, grievances and on the stand with confidence

Role of First Line Supervisors	Role of Administrators
<ul style="list-style-type: none"> <li>• Your facility's operational wellness is equal to the quality of your first line supervisors.</li> <li>• Issues: fast advancement, lack of mgmt. and leadership skills, supervisor v. floor responsibilities?</li> </ul>	<ul style="list-style-type: none"> <li>• Get out of the office and walk the jail (consider the benefits from a staff perspective rather than for inmates)</li> <li>• Deliberate indifference claims</li> <li>• Issues: no time to supervise/train supervisors, update policies, microscope v macroscope (proactive v reactive)</li> </ul>

## USING INTERNAL AUDITS PROACTIVELY.

What is the purpose of an audit or inspection?

Does the answer change based on who you ask and their role/title?

### Inside-Out Audit Methodology

- Not an event on the calendar (ongoing process/discovery)
- No gotcha mentality
- No lipstick on the pig (fake results to get the A+ report card)
- Staff buy-in and rewards for discovering dysfunction

Garbage in – garbage out. You will only have results as good as the standards by which you audit. Outside inspections have their own agendas. “Minimum” standards are “minimum” (liability threat?)

### Documentation

Prisoners file more litigation than any other group in the U.S. How can you proactively protect against prisoner litigation?

**IF YOU DIDN'T WRITE IT DOWN ...  
IT DIDN'T HAPPEN!**

Develop a systematic plan to document and record action taken to counter and diminish vulnerability to inmate litigation.

- Counts, forms, logs
- Reports (incident, use of force)
- Inmate files/records
- Grievances

