PRIMA'S 2019 RISK MANAGEMENT
WEBINAR SERIES

Jail Operations: Evolving Changes in Deliberate Indifference and Risk Reduction Through Culture Change

Ric Bishop, Manager
All About Jails, LLS
www.allaboutjails.com
ricbishop@allaboutjails.com
Twitter: @AAJsLLC
Phone: 360-818-4000

Introduction

- Ric Bishop, Manager
  All About Jails, LLC
  - Current Jail Administrator – 36 years experience in public safety; Chief Corrections Deputy Clark County Sheriff's Office overseeing 590 jail beds, 2 facilities and 170 staff
  - Risk Consultant – 9 years working with Risk Pools and Insurance Companies doing on site jail risk assessments and mitigation
  - Jail Expert Witness – 5 years expert witness in jail operations, use of force, conditions of confinement and in-custody death

Areas to be Covered
(Objectives)

- ***Inmate Mail Risk Threat Happening Now!***
  - ***Photos Mailed from Commercial Website***

- New Standard of Deliberate Indifference
- Application of Reasonable Officer Standard
- Risk Reduction Through Cultural Change
- Questions

Immediate Inmate Mail Risk

- A company is marketing an assortment of suggestive photos of men, women and transgender individuals to inmates in any correctional facility in the United States
- There are a large variety of photos that are on the fringe or may violate your inmate mail policy
- Return notification if rejected

How?

- Turner vs. Safely, 482 U.S. 78 (1987)
- Case regulating regulations inmate to inmate mail correspondence
- Held the "… that a lesser standard is appropriate whereby inquiry is made into whether a prison regulation that impinges on inmates' constitutional rights is *reasonably related* to legitimate penological interests."

Example

- Turner vs. Safely, 482 U.S. 78 (1987)

  A regulation preventing mail sent by an inmate, to an inmate, promotes legitimate security concerns, because mail between facilities can be used to communicate escape plans, to arrange violent acts, and to foster prison gang activity.

How?

- Turner vs. Safely, 482 U.S. 78 (1987) Elements
  1. whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection cannot be so remote as to render the regulation arbitrary or irrational
  2. whether there are alternative means of exercising the asserted constitutional right that remain open to inmates, which alternatives, if they exist, will require a measure of judicial deference to the corrections officials' expertise;
  3. whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on inmates' liberty, and on the allocation of limited prison resources, which impact, if substantial, will require particular deference to corrections officials
  4. whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prisoner's

What To Do

- Contact your jail administration
- When was your inmate mail/publication policy updated?
- When was the last time your staff was trained?
- If you do reject, confirm you have thoroughly updated policies, trained your staff and can articulate your legitimate government reason for the actions you are taking
- Additional Resources: www.aele.org
  - Free Law Library – Jail Prisoner Law Bulletin Case Summaries - Mail

Conditions of Confinement

The Court must examine the effect upon inmates of the conditions of the physical plant (lighting, heat, plumbing, ventilation, living space, noise levels, recreation space); sanitation (control of vermin and insects food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping, and working); safety (protection from violent, deranged, or diseased inmates, fire protection, emergency evacuation); inmate needs and services (clothing, nutrition, bedding, medical, dental, and mental health care, visitation time, exercise and recreation, education and rehabilitative programming); and staffing (trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other inmates)…**when the cumulative effect of the conditions of incarceration threatens the physical, mental, and emotional health** and well-being of the inmates and/or creates a probability of recidivism and future incarceration, **court must conclude that the conditions of confinement violate the constitution**.

Rhodes v. Chapman - 452 U.S. 337 (1981)

Current Risk/Litigation

- Use of Force
  - Kingsley v. Hendrickson ET A. No 14-6368 (2015)
    - Moves from 14th Amendment to 4th Amendment
    - Subjective vs. Objective
    - Reasonable Officer vs. Intent
    - Check List for Reasonable Officer Review

Current Risk/Litigation

- Use of Force Check List for Reasonable Officer Review
  - Judged through the perspective of a reasonable officer
    - Officer with same or similar training and experience
    - Facing similar circumstances
    - Act the same way or use similar judgment
  - Based on the totality of the facts known to the officer at the time the force was applied
    - **No matter how compelling the evidence is to be found later**
    - **No hindsight evaluation**
  - Based on the facts known to the officer without regard to the underlying intent or motivation

Current Risk/Litigation

- Use of Force Check List for Reasonable Officer Review – Continued
  - Based on the knowledge the officer acted properly under established law at the time
  - What was the reasonable expectation of injury?
  - Severity of the crime at issue?
  - The threat of the suspect?
  - The level of resistance offered by the suspect?

Current Risk/Litigation

- Use of Force Check List for Reasonable Officer Review - Continued
  - Added for the Corrections Environment
    - Classification (for use with crime at issue)
    - Institutional Behavior
    - Potential for Escape
    - Medical or Mental Conditions (if known)
- Analysis Against Policies

Deliberate Indifference

Historical Subjective Criteria

Farmer makes it clear that deliberate indifference in the sense meant is based on subjective awareness—i.e., that the prison official knows that an inmate or inmates face a substantial risk of serious harm and disregard that risk by failing to take reasonable measures to abate it or prevent it.

2007 (5) AELE Mo. L. J. 301

Classification

- Classification of Inmates
  - Castro vs. LA County
  - Inmate on Inmate Assault
    - Sobering Tanks
    - Volunteers
    - Policy Driven Security Checks
  - Court application of Kingsley
    - Objective Officer, Indifference

Medical

- Gordon vs. Orange County
- In-custody Death
    - Medical
    - Security Rounds
    - Following Your Policies and Procedures

  – Court application of Kingsley
    - Expanded Objective Indifference

Reentry and MAT

Medication Assisted Treatment (MAT) or Program (MAP)

Reentry

Medication Assisted Treatment (MAT)

- Opioid Epidemic
  - Jails have interrupted or taken cold turkey approach to opioid addiction
  - Sheriff's and Police Chiefs have been resistive
  - Litigation for opioid disorder under Americans with Disabilities Act
    - Aroostook County Jail, State of Maine
      - Federal Court of Appeals First Circuit
    - Whatcom County Jail, State of Washington
      - Settled, will provide

Medication Assisted Treatment (MAT)

- Money
  - Federal Grant, Partnership with Community Provider
  - Bridge
  - Get with your local jail Medical Provider, Health Department or Human Services to Strategize an Approach
  - Longer term, the more you treat, the less they come to your jail and you reduce your risk of litigation

Culture Shift

- Jails Populations Have Changed
  - Mentally Ill
  - Chemically Dependent
  - Along with violent and repeat offenders

- Our buildings, training and management must change to avoid risk!

Culture Shift

Mentally Ill

- Crisis Intervention Training for Corrections
  - National Institute of Corrections
  - Combined with alternatives that keep our staff reasonable safe in the corrections environment
- Reentry Programs/Discharge Planning
  - National Institute of Corrections
  - BJA Grants
  - Community Partnerships Without Costs

Culture Shift

- Chemically Dependent
  - Medication Assisted Treatment (MAT)
    - ADA
    - Federal Grants
    - Community Partners
      - Difficulties with traditional view of Public Safety
    - Reducing Risk
      - No cold turkey detox
      - Not in your jail

Culture Shift

Criminally Violent and Repeat Offenders

- Classification
  - Face to Face
- Training
  - Population Supervision (not just observation)
  - Updated Use of Force
  - Documentation through video and reports
- Challenge
  - Least restrictive housing
    - Keep Separates

Questions?

Thank You

Ric Bishop, Manager

All About Jails, LLC

www.allaboutjails.com

ricbishop@allaboutjails.com

Phone: 360-818-4000

Twitter: @AAJsLLC