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Compliance in Jail Operations: Risk, Responsibility, and Response.



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What Is NIJO?

National Institute for Jail Operations

We offer the following services to jails across the country

- 1. Policy Writing**
- 2. Live Training- for corrections officers and above**
- 3. Technical Services- staffing and operational analysis**
- 4. DACOTA on-line training for corrections**
- 5. National Accreditation**
- 6. National Certification**
- 7. Legal Based Jail Guidelines- Many states!**



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Today's Topics

- Background checks in hiring
- Risks associated with inadequate checks
- Staff Training
- Handling Misconduct





Staffing and Hiring

- Many agencies are struggling to hire adequate staff.
- Some agencies are lowering standards and cutting corners in order to fill the gaps.
 - Be careful, you can cause yourself an entire new set of problems!
 - Quality vs. Quantity



Problems Facing Jails Today

Staffing

- Background Checks! You MUST perform a background check on all corrections officer new hires!
- Lack of background checks or inadequate background checks open up numerous Negligent Hiring Claims.
 - Criminal History
 - Employment History
 - Driving



Problems Facing Jails Today

Staffing

- Background Checks are a way for agencies to do a risk assessment on a potential employee BEFORE they are hired.
- Background checks help determine if placing someone in a position creates an "unreasonable risk".





Problems Facing Jails Today

Staffing

- Inadequate background checks for Corrections Officers are very risky due to the direct supervision of incarcerated individuals.
- Examples
 - Past DUI's- Transporting Inmate
 - Past fights or assaults- Use of Force on IM's
 - Sexual Misconduct- Sexual abuse allegation
 - Drug history- Dangerous contraband

Sometimes hiring family or friends of current employees can become problematic.



Problems Facing Jails Today

Staffing

When litigation involving negligent hiring occurs, plaintiffs' attorneys focus on 4 key areas.

- 1. Unfitness:** The employee was unfit for the job.
- 2. Employer Knowledge:** The agency knew or *should have known* about the unfitness through reasonable background checks.
- 3. Causation:** The employee's unfitness caused the injury or the violation of the inmates' rights.
- 4. Employer Negligence:** The employer's failure to check was a substantial factor in the harm.



Hiring is a Risk!

Agencies often become desperate to hire when severely short staffed.

- Don't put your agency in a bad position but do understand people make mistakes.
- Be fair and open-minded. There is such a thing as, "Acceptable Risk"
- Drug use- Disqualify? Or Case by Case basis?
- Alcohol related incidents?
- How old is the offense? Has the applicant demonstrated change or good qualities?



Board of Comm'rs of Bryan City v. Brown (1997)

Jill Brown alleged Deputy Stacy Burns arrested her with excessive force and was liable because its Sheriff had hired Burns without adequately reviewing his background. Burns had several misdemeanor arrests including one for assault. The Sheriff admitted to not closely reviewing Burns' criminal record before hiring him.



Board of Comm'rs of Bryan City v. Brown (1997)

The courts held that municipalities are not liable for hiring employees who violate someone's rights unless a reasonable policymaker would conclude that the obvious consequence would be the deprivation of a third party's federally protected rights.





Board of Comm'rs of Bryan City v. Brown

Jill Brown did not adequately prove that the Sheriff's decision to hire Burns without adequate screening was a conscious disregard for a risk that Burns would use excessive force in violation of her constitutional rights.





This decision should put agencies on notice that negligent hiring can have negative consequences. This is why there is a hiring process and background check for corrections staff.

Both negative retention and negligent hiring can result in 8th Amendment claims.





Training

Once officers are hired, it's critical to provide them with the tools to do their job competently and lawfully. Agencies **MUST** provide adequate training.

- Failure to train claims are increasingly common in corrections litigation.
- Due to short staffing, some agencies are taking short-cuts in training in order to get people in the operation faster. **RISKY!**
 - Some jails do not provide formal training until the officer has already been on the job for months!



Training New Corrections Officers

When training new corrections officers, consider the following.

- There should be academic, physical and practical portions of each officer's training.
- Training should include documented testing.
- An OJT (On the Job Training) portion of training should be implemented.
 - Documentation should be produced on key aspects of training and having each new officer display proficiency in each category.
 - Official reviews should take place where concerns and performance are reviewed.



Training New Corrections Officers

There should be a probationary period for each new corrections officer. (6 months/ 1 year)

Discuss and document each new offices strengths and weaknesses at least each month. Don't pencil whip evaluations!

Close to the end of the probationary period, a decision should be made to retain or to terminate based on the documented progress of the probationary officer.



Why Is On-Going Training Important?

- **Training.** Make sure on-going training is completed and carefully documented.
 - Basic CPR
 - Suicide prevention
 - Use of force
 - Mental health
 - First aid
 - Symptoms and signs of overdose
 - Constitutional Rights, Classification, Mail, Inmate Supervision, IPC skills



What Training Is Important?

- **On-Going Training for corrections officers should be completed at LEAST 20 annually. (40 hours optimal)**

Annual training should involve going over important high liability areas and provide hard hitting, specific training.

Document the training!





Why On-Going Training Is Important

Officers can't be expected to still recall training they took when they were hired!

The law changes in corrections, officers need on-going training to keep pace with the rapid changes.

Officers that are trained are much more likely to meet our expectations and do good work for the agency.

Protect your agency against failure to train claims



Responding to Misconduct

The way an agency responds to officer misconduct is critical in deflecting claims of deliberate indifference or negligent retention.

If an agency fails to appropriately address misconduct, they will be considered part of the problem and subject to litigation.

Poorly addressed misconduct can erode the public's trust in an agency!



Responding to Misconduct- What to do?

First, an agency should have clear standards and outlines for employee behavior. How?

Policy and Procedure, Employee handbook, Rules and Regulations, Mission Statement

Staff must have expectations that they sign for and are held responsible for upholding. Each corrections officer should swear an oath and be held to those standards.



Responding to Misconduct- What to do?

Next, an agency should have a system to run checks or audits on their staff.

Failing to have any type of audit system can be considered, “burying your head in the sand” and ignoring misconduct.





Responding to Misconduct- What to do?

When discovering misconduct, what steps are needed to effectively manage and respond?

1. Conduct a thorough and prompt investigation that is documented carefully.
2. Determine fair and appropriate sanctions once guilt or innocence has been determined.
3. Don't slowplay it. Conduct a timely investigation and resolve the issue in a reasonable amount of time.



Responding to Misconduct- What to do?

After the investigation. Steps to take.

1. Make sure the punishment fits the crime. When deciding sanctions consider the following.
 - * The seriousness of the violation.
 - * Did the violation compromise safety/ security? If so, how seriously?
 - * The employee's disciplinary history.
 - * Does the violation damage the public's trust?



Responding to Misconduct- What to do?

After the investigation. Steps to take.

2. You must consider that the punishment should demonstrate that you and your agency take the violation seriously.





Responding to Misconduct- What to do?

After the investigation. Steps to take.

3. For non-serious violations, you must be sure to document SOME type of corrective action. Either informal discipline, or memorandums detailing the corrective action taken.



Responding to Misconduct- What to do?

After the investigation. Steps to take.

4. Progressive discipline is great, but there are some violations that should not be survivable. These offenses include but are not limited to: Sexual activity with an inmate, bringing in dangerous contraband, excessive force with serious injury, a serious lie in a report or official documentation.



Responding to Misconduct- What to do?

After the investigation. Steps to take.

5. Be consistent with your discipline: Similar infractions should garner similar discipline throughout your agency, unless the employee's specific disciplinary history dictates otherwise.

CONSISTENCY
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Responding to Misconduct- What to do?

After the investigation. Steps to take.

6. Remember- The goal of discipline is to change behavior. If you believe it will assist in that goal, require the offending officer to attend some type of remedial training. Topics can include:

Use of Force review, De-escalation, inmate rights, **Ethics**, etc.



Responding to Misconduct- What to do?

Minor discipline is discipline. Don't be afraid to issue minor discipline when warranted.

- If your agency issues discipline for issues such as tardiness, unkempt uniforms, horseplay or unprofessional behavior, it shows that your agency is holding staff accountable
- If your agency NEVER issues discipline, it will show the opposite.



Responding to Misconduct- What to do?

Discipline- I've heard from officers at many agencies.

"It's a good time to mess up"

"You have to kill someone to get fired"

There is dangerous trend in corrections to keep around employee's that have serious disciplinary issues.



Responding to Misconduct- Consequences

Failing to respond to misconduct

Failure to effectively respond to misconduct opens an agency to failure to supervise, deliberate indifference and negligence claims.

A plaintiff's attorney may easily argue that an agency's failure to address misconduct is the same as condoning it, or encouraging the negative behavior.



Responding to Misconduct- Consequences

Failing to respond to misconduct

You must address misconduct and appropriately discipline when necessary.

If there is a case of gross misconduct, such as excessive force with serious injury, bringing in dangerous contraband, or sexual contact with an inmate and the employee is not terminated, your agency will be exposed to serious litigation. Why?



Responding to Misconduct- Consequences

Failing to respond to misconduct

Your agency will be exposed for not taking misconduct seriously.

Plaintiffs attorney's will argue that by not terminating an employee for serious misconduct, the agency is allowing the environment in which the misconduct took place to continue and flourish. Almost condoning the conduct.



Responding to Misconduct- Consequences

Failing to respond to misconduct

Worst case scenario, the employee you didn't terminate for serious misconduct does the same thing again!

You will be found to be deliberately indifferent because you failed to terminate an employee you KNEW was a serious risk.



What Can an Agency do to Prepare?

- **Solid Policy.** Make sure your policy is updated and written to current case law and operational practices.
- **Conduct Training.** Both new and existing officers should receive regular quality training in high liability areas. All training should be carefully documented.



What Can an Agency do to Prepare?

- **Hold Staff Accountable.** Make sure your policy is updated and written to current case law and operational practices.
- **Have an Audit System in Place.** Do regular checks on high liability operational items. Be proactive and discover issues before they bite you!



What Can an Agency do to Prepare?

- **Conduct Self-Assessments.** Take a look at your operation and find areas to improve. Document the efforts to get better.
- **Call in a Fresh Set of Eyes.** Sometimes an outside expert can take a look at your operation and give great feedback on simple improvements.



What Can an Agency do to Prepare?

- **Review Employee Expectations.** Do you send a clear message to your corrections officers concerning expectations? Review and revise them if necessary.
- **Teach Ethics.** Employees, especially younger employees lack life experience. Ethics training can be extremely beneficial to new corrections officers.



Liability Focus

Jails are statistically the largest county **liability** – 70.3% of all the reported losses from counties nationally come from JAILS!





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