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KNOW THE LAW-The Importance of Keeping up with the law in corrections.



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WHY IS IT IMPORTANT TO KNOW THE LAW IN CORRECTIONS:

Consider how quickly the law changes in the world of corrections.

YOU are responsible for knowing and abiding the law.

Qualified Immunity Depends on it !

Three areas in corrections where knowing the law is paramount!

Use of Force



Due Process



Religion





Use of Force

Who wrote your jail's Use of Force policy?

**Many jails in the United States
have wording similar to this:**



Commonly Used Standard on Use of Force

A-ALDF-2B-01 (Mandatory)

The use of physical force is restricted to instances of justifiable self-defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority. In no event is physical force used as punishment.

Comment: None.



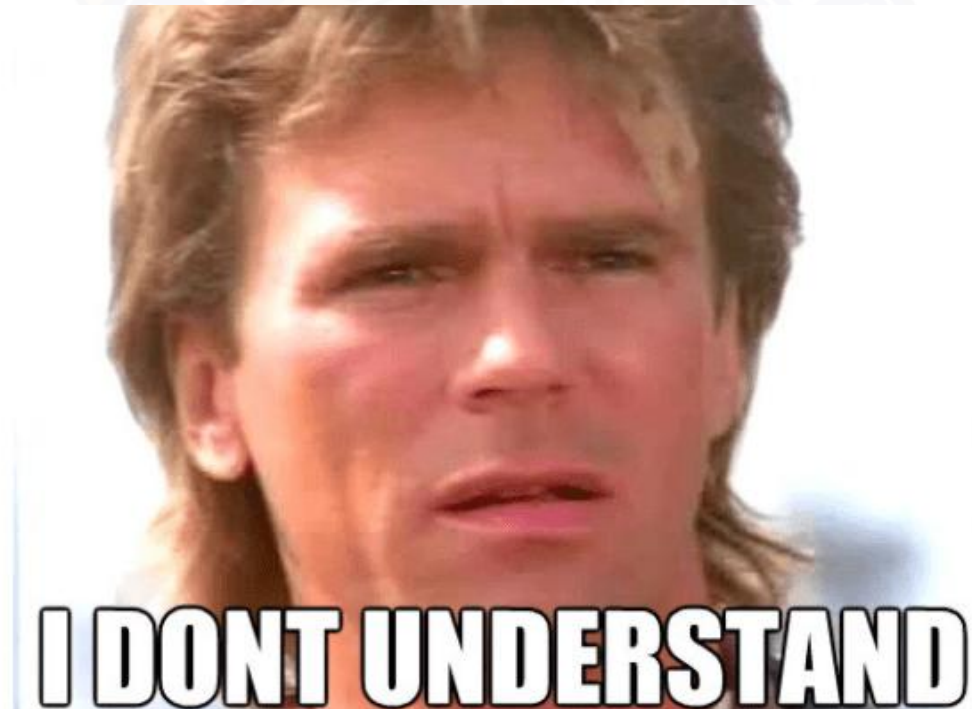
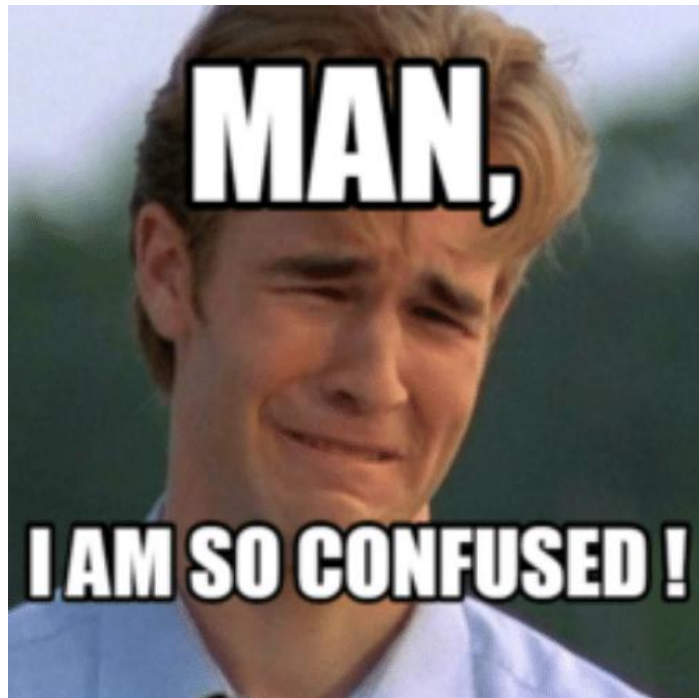
Issues:

1. The standard as written is essentially the objective reasonableness test used to govern use of force on the street.
2. The standard does not even mention the factors set by the U.S. Supreme Court for use in correctional facilities. By reading the text of the standard, the user gains no insight into the essential five factors against which their use of force incidents will be judged.
3. “Comment: None” Standards are to be accepted as written with no discussion of the rationale upon which the standard is based.
4. How does the sheriff or jail administration craft a lawful policy and procedure directive on Use of Force?



In 2015, the Supreme Court determined there are two different tests for evaluating use of force on inmates: a subjective test for force used on convicted prisoners and an objective test for force used on pretrial detainees.

See *Kingsley v. Hendrickson*, 576 U.S. (2015).





Subjective Test: Convicted

- Hudson v. McMillian, 112 S.Ct. 995, 999 (1992)
- Whitley v. Albers, 475 U.S. 312, 321 (1986).

When the courts evaluate the use of force on convicted inmates, the courts utilize a subjective test. The subjective test gives great weight to the state of mind and perceptions of responsible officers.

This is not the objective reasonableness test that governs the use of force by law enforcement officers or jail officers when handling pretrial detainees.



Subjective Test: Convicted

- Hudson v. McMillian, 112 S.Ct. 995, 999 (1992)
- Whitley v. Albers, 475 U.S. 312, 321 (1986).

When using force on convicted prisoners, the Supreme Court ruled, "the question whether the measure taken **inflicted unnecessary and wanton pain and suffering** ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline or **maliciously and sadistically for the very purpose of causing harm.**'"

To decide whether force was reasonable or malicious and sadistic, they outlined five key factors for staff to employ.



Subjective Test: Convicted

- Hudson v. McMillian, 112 S.Ct. 995, 999 (1992)
- Whitley v. Albers, 475 U.S. 312, 321 (1986).

Criteria for Justification for Use of Force (Convicted)

Policies and procedures for use of force shall include the following objective criteria for evaluating use of force:

- A. the threat perceived by the responsible officers;
- B. whether in light of the perceived threats it was reasonable to infer force was necessary to resolve the exigency;
- C. what efforts were made by officials to temper the forceful response;
- D. the amount of force used in relation to the need for force; and
- E. whether injuries suffered by the prisoner were clearly of greater severity than the circumstances could plausibly justify.



Objective Test: Pre-Trial

- Kingsley v. Hendrickson, 576 U.S. (2015).

In **Kingsley v. Hendrickson**, the Court ruled that the standard for **excessive use of force claims against pretrial detainees** under the Fourteenth Amendment is **NOT** the Whitley v. Albers/ Hudson v. McMillian standard (whether the force used was “malicious or sadistic for the very purpose of causing harm”) that Circuit Courts had adopted ever since the Whitley v. Albers decision.



Objective Test: Pre-Trial

- Kingsley v. Hendrickson, 576 U.S. (2015).

The new standard for **pre-trial detainees** is whether the force used was **objectively unreasonable**.

This ruling reflects a departure of previous standards used to govern use of force in a jail setting.

Administrators and staff should know the difference and be able to articulate and reflect that difference in court.



Objective Test: Pre-Trial

- Kingsley v. Hendrickson, 576 U.S. (2015).

According to the Kingsley court, an objective test for force is used to justify use of force on pretrial detainees. The objective test is the same test that is used to evaluate use of force on persons who are not incarcerated. (street test). That test is the Fourth Amendment objective reasonableness test.

“[A] pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.”



Objective Test: Pre-Trial

- Kingsley v. Hendrickson, 576 U.S. (2015).

The officers' intent, state of mind, and perceptions when pretrial detainees are involved are no longer the important considerations when convicted prisoners are involved.

There are the 9 factors applicable under the objective reasonableness standard. Note the similarities and differences between the subjective and objective tests.



Objective Test: Pre-Trial

- Kingsley v. Hendrickson, 576 U.S. (2015).

- The force used must be non-punitive – not used to punish;
- The force must be rationally related to a legitimate governmental objective;
- The facts known to the officer at the time;
- Based on the facts, determine if there is a need for application of force;
- The relationship between the need for the use of force and the amount of force used;
- Any effort made by the officer to temper or to limit the amount of force;
- Whether the inmate was actively resisting;
- The severity of the security problem at issue; and
- The extent of the inmate's injuries.



Kingsley v. Hendrickson, 576 U.S. 135 S.Ct. 2466 (2015)

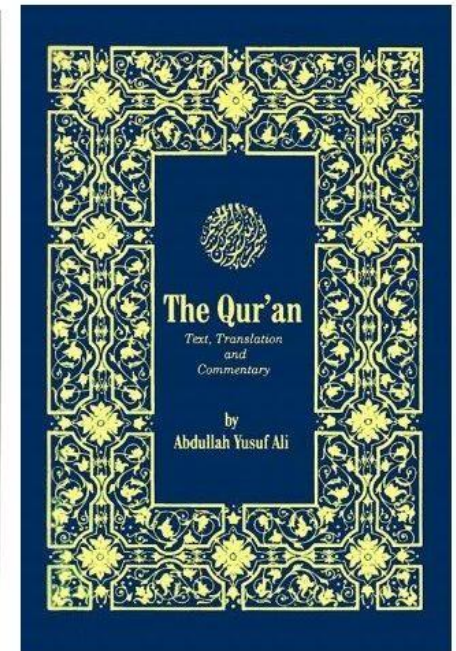
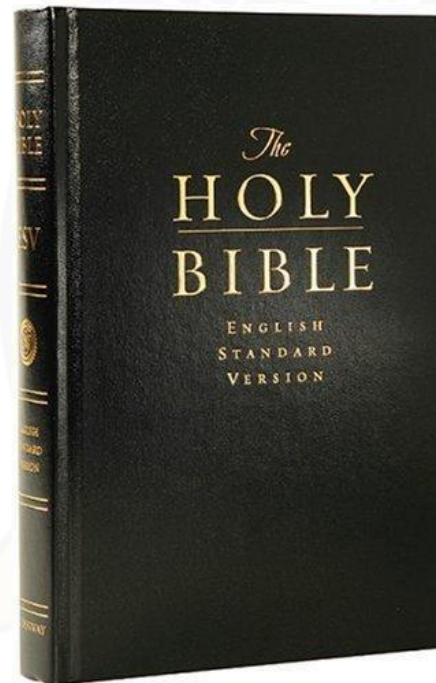
RESULT: Two Different Standards for Using Force in Jails.

What does this ruling mean?

- Policies and procedures don't necessarily need to change but administrators should be aware as they prepare for defense in litigation
- Less summary judgment wins for jail administrations
- More court time is anticipated
- Hire your experts

ON THE JAIL HORIZON ...

RELIGIOUS RIGHTS

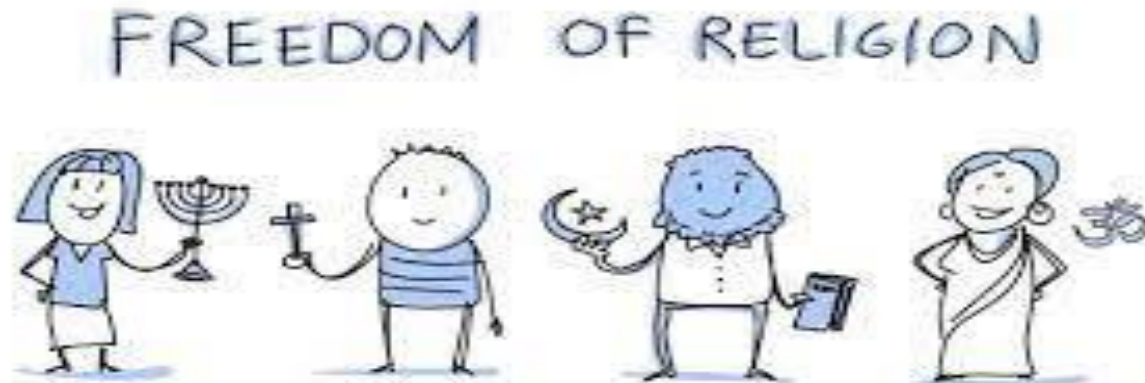




First amendment Rights Freedom of Religion

O'Lone v. Estate of Shabazz (1987)

Inmates in New Jersey sued because the prison required them to work outside the prison which barred some inmates from participating in a Muslim religious service.





O'Lone v. Estate of Shabazz (1987)

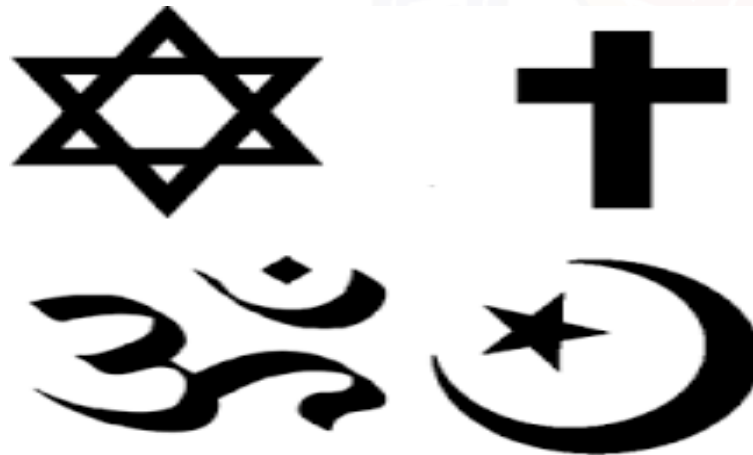
No. Chief Justice William H. Rehnquist delivered the opinion for the 5–4 majority. The Court held that, while prisoners do not forfeit their constitutional rights after being convicted of a crime, being incarcerated does place necessary limitations on those rights. Because of the particular interests and dangers involved in prisons and the prison administration's everyday experience with the operation of a prison, courts should largely defer to prison administrators on questions of policy or regulation.





O'Lone v. Estate of Shabazz (1987)

Therefore, even when an inmate alleges that a prison policy infringes on his or her constitutional rights, the policy is valid as long as it is reasonably related to a legitimate penological objective, as the policy in this case was. The Court also held that a prison is not required to adopt any alternative policy that may have “undesirable results,” as determined by the prison.





Questions

First amendment Rights

Freedom of Religion

Religious freedom may be practiced provided that it does not adversely effect safety, security and the good order of the corrections facility.





Questions

First amendment Rights

Freedom of Religion

Inmates have the right to freedom of religious affiliation and voluntary religious worship provided that the exercise of this right does not directly interfere with the security and discipline of the corrections facility.





Questions Freedom of Religion

All rules and regulations regarding religion must be applied to ALL religions without distinction, discrimination or promotion.

It is important not to treat certain religions differently within your policy. As long as all religions must adhere to the same rules, it is non-discriminatory.





Questions

First amendment Rights

Freedom of Religion

An inmates right to religious freedom may be curtailed only when the religious exercise directly interferes with the security, discipline and the good order of the corrections facility.



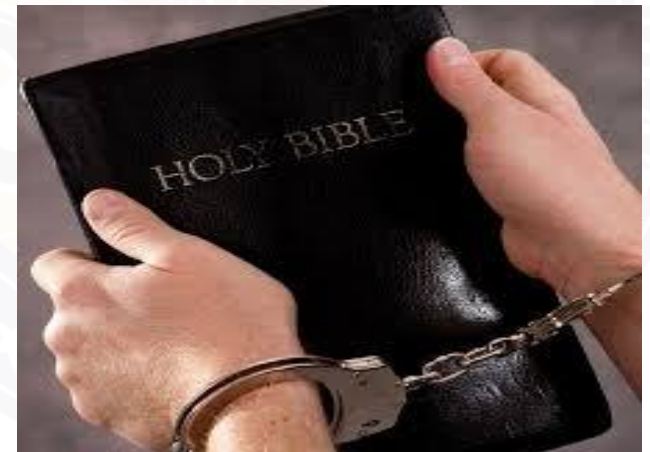


Questions

Freedom of Religion

In order to restrict the right you must:

1. Demonstrate a compelling need for the restriction. How does it adversely effect the safety, security and good order of the facility?
2. Adopt the least restrictive alternative for regulating the practice.





Fifth Amendment Rights

Right to Due Process

Wolf v McDonnell (1974)





Fifth Amendment Rights

Right to Due Process

Wolf v McDonnell (1974)

Wolff v. McDonnell, 418 U.S. 539 (1974), the Supreme Court found that, when prisoners lose good time credits because of a disciplinary offense, they are entitled to:

- (1) Written notice of the disciplinary violation;
- (2) The right to call witnesses at their hearing;
- (3) Assistance in preparing for the hearing;
- (4) A written statement of the reasons for being found guilty; and
- (5) A fair and impartial decision-maker in the hearing.



Fifth Amendment Rights

Right to Due Process

Every jail should have a system for maintaining inmate discipline that is consistent with the constitutional requirements for due process.





Fifth Amendment Rights Right to Due Process

The first step toward such a system is to compile a clear and comprehensive set of rules that explains the required standard of conduct, that defines behaviors that would be in violation of the rules, and indicates the penalty of a proven violation.

**EXPLAIN
YOUR
RULES**



Fifth Amendment Rights

Right to Due Process

A copy of the rules should be given to each inmate. The rules should be read or explained to inmates who can't read.

Rules usually come included in any inmate handbook that clearly states the rules and expectations of conduct.



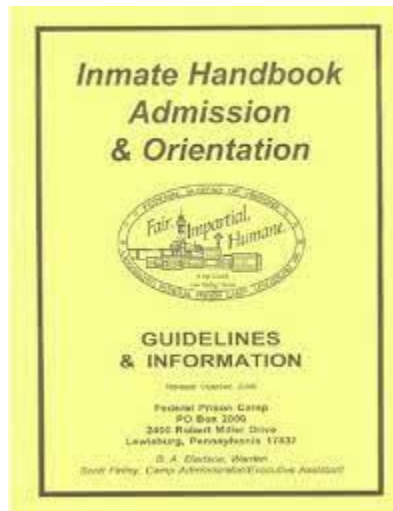
**Inmate
Handbook**



Fifth Amendment Rights

- Right to Due Process

Inmates should sign and acknowledge in some way that they have read and understand the rules and expectations.



A handwritten signature in black ink, appearing to read "Ray H. L.", is written over a large, faint watermark of the National Institute for Jail Operations logo.



Fifth Amendment Rights Right to Due Process

The jail should have a formal procedure for imposing disciplinary sanctions for violations of the facility rules and the procedure should be outlined in the inmate handbook.

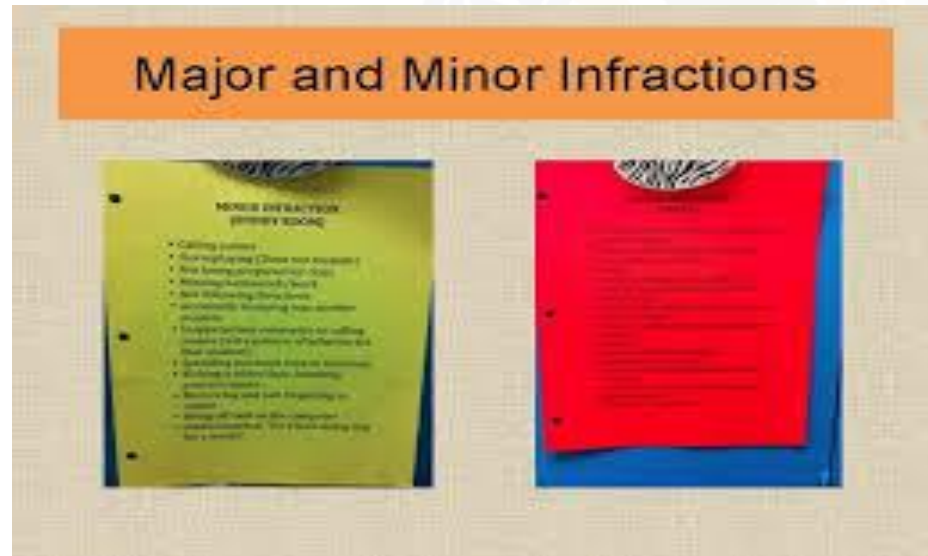




Fifth Amendment Rights

Right to Due Process

Violations should be in the form of minor and major rule violations. Obviously some behavior is minor as opposed to more serious infractions.





Fifth Amendment Rights Right to Due Process

The Sanctions for major or minor violations should reflect the seriousness of the violation itself. Inmates should understand that the more serious the violations, the more harsh the sanction.





Fifth Amendment Rights

Right to Due Process

The formal procedure for handling minor violations should be outlined in the inmate handbook. Inmates should have the option of accepting the sanctions or request a hearing to have their case heard. The staff member hearing the case should consider all evidence and determine a finding.





Fifth Amendment Rights

Right to Due Process

The formal procedure for handling major violations should be outlined in the inmate handbook.

- For infractions considered to be a major violation, the procedure should include:
 - Written notice should be given to the inmate advising him/her of the charges against them.
 - The inmate should be given 24 hrs to prepare for the Disciplinary Hearing from the time they receive notice of the charges.
 - A hearing is held before an impartial staff member.
-



Fifth Amendment Rights Right to Due Process

An opportunity should be given to the inmate to present evidence or to call witnesses.

- A finding of guilty, not guilty, dismissed or unsubstantiated should be based upon the evidence submitted that supports the charge(s).
- The inmate should have the right to appeal the Disciplinary Hearing within 24 hours of the findings.
- A permanent record of the Disciplinary Hearing is kept. It's a good idea to record and store all hearings.



Fifth Amendment Rights Right to Due Process

If a crime is committed in the jail, any inmate who is a suspect has the same constitutional rights as if he/she were not confined.

A victim of a crime that is committed in the jail should also have the same victim rights as if he/she were not confined.





Fifth Amendment Rights

○ Right to Due Process

The inmate that is a suspect has the freedom from self-incrimination when criminal charges are filed in addition to in-house charges.

For all inmate Disciplinary Hearings that involve pending criminal charges, the inmate should be notified in writing that any statements made during the hearing may be used against them in the criminal proceedings.





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Why are we losing?



Think proactive v reactive!

The Courts Have Caught Up

“We follow **BEST PRACTICES.**”

**What is a
“Best Practice”**

The Courts Have Caught Up

**Who determines what
is considered “best?”**



In 1978, the DOJ published federal correctional standards with the intention of defining requirements for incarcerating pretrial detainees; however, the standards were rebuffed by the U.S. Supreme Court. In that case, the Court ruled:

[T]he draft recommendations of the Federal Corrections Policy Task Force of the Department of Justice regarding conditions of confinement for pretrial detainees are not determinative of the requirements of the Constitution.

See Dept. of Justice, Federal Corrections Policy Task Force, Federal Standards for Corrections. **Bell v. Wolfish**, 441 U.S. 520, 543 n. 27 (1979) (emphasis added).

The Courts Have Caught Up

“Legal- Based”

What the law requires

- Constitutional
- Federal Law
- Circuit Court
- State Laws and statutes

“Best Practices”

What the organization requires

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



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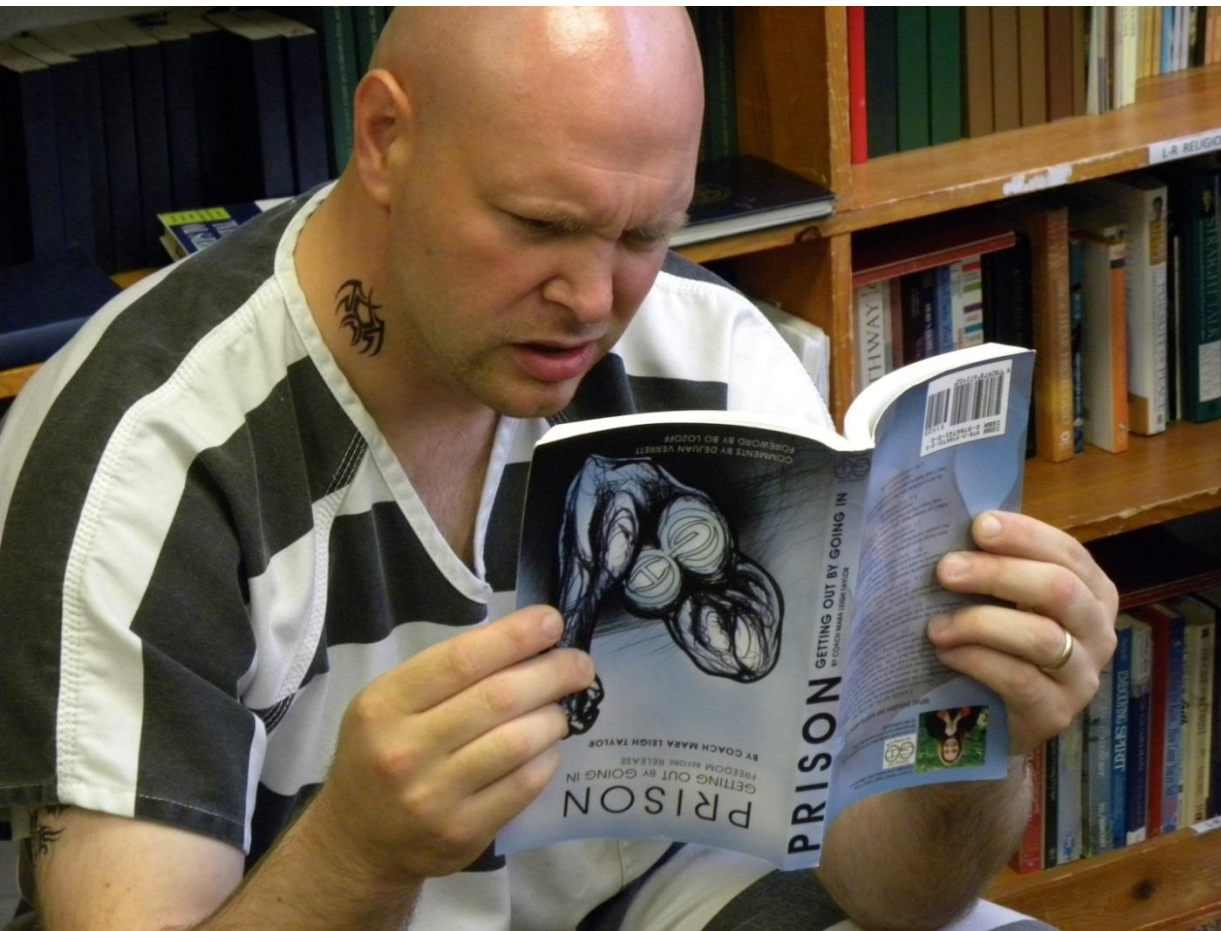
What difference does it make
if you know the law





“I’m gonna sue you!”
“You violated my rights!”

The Question of Liability



Whether
you know
the law or
not,
you are
held
responsible
to uphold it.

Qualified immunity, good-faith defense depends on **knowing and **complying** with clearly established law.**



The Courts Have Caught Up

"[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).



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= LIABILITY



NATIONAL INSTITUTE FOR JAIL OPERATIONS

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



Where do you start?



Legal-Based Approach to Running a Constitutionally Safe Jail



Policy & Procedure Development

POLICIES

- Widespread application
- Changes less frequently
- Usually expressed in broad terms
- Often states the “what” and the “why”

PROCEDURES

- More narrow application
- Prone to change
- Often stated in more details
- States “how”, “when” and /or “who”
- Describes the operational process



Future Webinars!

- **Session 5: Staff Retention: How to Reduce Turnover**
September 2, 2026 from 11:00 AM to 12:00 PM -
- **Session 6: Beneficial Training to Reduce Liability**
October 7, 2026 from 11:00 AM to 12:00 PM -
- **Session 7: Inmate Death – How to Reduce Liability, Suicide Prevention Policy**
November 4, 2026 from 11:00 AM to 12:00 PM -
- **Session 8: Procedures for Suicide Prevention – Proactive Steps Your Agency can take to help Prevent Suicide in your Facility**
December 2, 2026 from 11:00 AM to 12:00 PM -



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HAVE QUESTIONS OR NEED MORE RESOURCES?



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- On-Line DACOTA training
- BASIC Academy- ABC Academy for beginners
- Accreditation- Become a NIJO Accredited Facility!
- Legal Based Jail Guidelines- Corrections Law at your fingertips!
- Special Services- Staffing Analysis, Operational Assessments, In-Person Training, etc.
- Legal Based Policy!
- ELITE Academy for Jail Administrators!

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