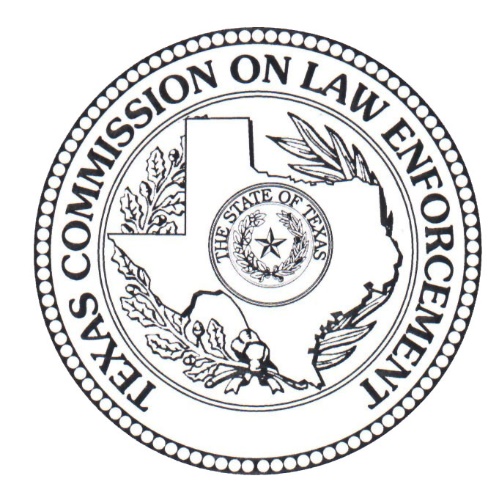
Legal Issues for County Corrections



Course #3506

April 2021

Legal Issues for County Corrections

ABSTRACT

This course is designed to provide the county corrections officer with an understanding of the complex legal issues surrounding their work and an understanding of the legal system. The course will cover the impact of state standards and agency policy on liability, types of lawsuits, use of force, classification of inmates, access to the courts, and searches. This Instructor Resource Guide (IRG) establishes the minimum learning objectives required for this course. It is designed to assist the instructor in developing a complete lesson guide with which to conduct the course. Standing alone, this IRG is not a lesson plan.

**Note to Trainers: It is the responsibility of the training coordinator to ensure this curriculum and its materials are kept up to date. Refer to curriculum and legal resources for changes in subject matter or laws relating to this topic as well as the Texas Commission on Law Enforcement website at** [**www.tcole.texas.gov**](http://www.tcole.texas.gov) **for edits due to course review.**

**Target Population:** Texas County Jail Personnel

**Student Prerequisites:**

* Basic or Temporary Texas County Corrections Officer (Jailer) License

**Instructor Prerequisites:**

* Possess a TCOLE Instructor Certificate of Proficiency and documented knowledge/training in course subject matter OR
* Documented subject matter expert

**Length of Course:** 24 hours minimum.

**Equipment:**

* None

**Training Delivery Method(s):**

* Online
* Instructor-led, classroom-based
* Instructor-led, virtual classroom

**Method(s) of Instruction:**

* Lecture
* Discussion
* Videos

**Facility Requirements:**

* Standard classroom

**Assessment:** Assessment is required for completion of this course to ensure the student has a thorough comprehension of all learning objectives. Training providers are responsible for assessing and documenting student mastery of all objectives in this course.

In addition to a required end-of-course written exam, the Commission highly recommends a variety of testing/assessment opportunities throughout the course which could include oral or written testing, interaction with instructor and students, case study and scenario, and other means of testing students’ application of the skills, as the instructor or department deems appropriate.

Unless otherwise indicated, the minimum passing score shall be 70%.

Legal Issues for County Corrections

Learning Objectives

UNIT 1 The Legal System

* 1. **Learning Objective:** The student will identify the sources of law that govern jail operations.
  2. **Learning Objective:** The student will be able to identify the federal and Texas state court structures.
  3. **Learning Objective:** The student will be able to identify the role of precedents in the American legal system.
  4. **Learning Objective:** The student will be able to discuss the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Constitutional Amendments as they relate to inmate rights.
  5. **Learning Objective:** The student will be able to discuss the history of corrections in the context of the legal system.

UNIT 2 Liability for Jail Personnel

* 1. **Learning Objective:** The student will be able to discuss the concept of protected interests.
  2. **Learning Objective:** The student will be able to discuss the effects that Texas Jail Standards have on liability issues.
  3. **Learning Objective**: The student will be able to outline the extent of inmates’ right to protection based upon the Constitution, court cases, and state jail standards.
  4. **Learning Objective:** The student will be able to identify the importance of having written agency policies and procedures and the liability that arises when it is poorly written or not followed.
  5. **Learning Objective:** The student will be able to list the types of legal actions that are available to inmates for redress against claims of abuse.
  6. **Learning Objective**: The student will be able to explain how and why they can be held personally and financially liable for judgments against them.
  7. **Learning Objective**: The student will be able to identify situations where action or inaction may result in liability for failure to protect based on recent case law.

UNIT 3 Use of Force

* 1. **Learning Objective:** The student will be able to define force and use of force.
  2. **Learning Objective:** The student will be able to identify legal obligations regarding use of force.
  3. **Learning Objective:** The student will be able to identify specific circumstances where there is legal justification for a use of force.
  4. **Learning Objective:** The student will be able to identify situations when use of chemical agents is appropriate.
  5. **Learning Objective:** The student will be able to identify approaches to reducing liability and when a supervisor may be held liable for use of force incidents.
  6. **Learning Objective:** The student will be able to identify the importance of report writing for use of force incidents.
  7. **Learning Objective:** The student will be able to outline the reasons for having a protocol regarding investigation of use of force.

UNIT 4 Classification of Inmates

* 1. **Learning Objective:** The student will be able to discuss legal liability issues related to classification.
  2. **Learning Objective:** The student will be able to recognize the need to provide special supervision and protection to certain types of inmates.
  3. **Learning Objective:** The student will be able to identify the benefits of thorough and accurate report writing to classification decisions.

UNIT 5 Inmate Separation

* 1. **Learning Objective:** The student will be able to explain the difference between the four types of separation.
  2. **Learning Objective:** The student will be able to state the due process requirements for disciplinary separation.
  3. **Learning Objective:** The student will be able to identify unconstitutional conditions of administrative separation.

UNIT 6 Medical and Mental Health Care Treatments for Inmates

* 1. **Learning Objective:** The student will be able to explain the constitutional standard of deliberate indifference to serious medical needs of inmates.
  2. **Learning Objective:** The student will be able to discuss the legal obligations of administrators to provide systems for identifying health problems, handling emergencies, and providing routine health care needs of inmates.
  3. **Learning Objective:** The student will be able to identify trends in case law and legislation concerning inmates suffering from mental problems.
  4. **Learning Objective:** The student will be able to identify various medical procedural issues prone to litigation.

UNIT 7 Inmate Right to Access the Courts

* 1. **Learning Objective:** The student will be able to identify some of the basic issues concerning an inmate’s right to access the courts.
  2. **Learning Objective:** The student will be able to explain the legal requirements of corrections facilities concerning access to law libraries and acceptable alternatives.

UNIT 8 Legal Issues Concerning Searches

* 1. **Learning Objective:** The student will be able to identify the circumstances when a strip search may be performed at the time of booking.
  2. **Learning Objective:** The student will be able to identify the circumstances when body cavity searches of inmates may be conducted.
  3. **Learning Objective:** The student will be able to identify the impact of Fourth Amendment court decisions on searches of inmates in their living areas.
  4. **Learning Objective:** The student will be able to identify the circumstances when visitors and employees may be subjected to pat down searches.

Legal Issues for County Corrections

# UNIT 1. The Legal System

## The student will be able to identify the sources of law that govern jail operations.

1. The United States and Texas constitutions
2. Federal and State statutes
3. Federal and State court decisions
4. Texas Commission on Jail Standards

## The student will be able to identify the federal and Texas state court structures.

## The Supreme Court is the highest court in the United States. Article III of the U.S. Constitution created the Supreme Court and authorized Congress to pass laws establishing a system of lower courts.

* 1. There are 13 appellate courts that sit below the U.S. Supreme Court and they are called the U.S. Courts of Appeals.
     1. There are 94 federal judicial districts that are organized into 12 regional circuits, each of which has a court of appeals.
     2. The 13th court of appeals is the Federal Circuit, which has nationwide jurisdiction over certain appeals based on specialized subject matter. (For example, this is the only appellate court for decisions on patent law)
  2. The nation’s 94 district or trial courts are called U.S. District Courts. These courts resolve disputes by determining the facts and applying legal principles to decide who is right.

## The judiciary of Texas is established in Article 5 of the Constitution of Texas and is further defined in the Texas Government Code and Texas Probate Code.

* 1. The State Supreme Court has final appellate jurisdiction in civil and juvenile cases, while the Court of Criminal Appeals has final appellate jurisdiction in criminal cases.
  2. Within Texas there are 14 regional Courts of Appeals, which have jurisdiction over intermediate appeals from trial courts in their respective courts of appeals districts. Texas also hosts the following courts:
     1. 482 District Courts
     2. 526 County-Level Courts
     3. 801 Justice Courts
     4. 945 Municipal Courts

**INSTRUCTOR NOTE:** Refer to and pull up the court structure of Texas chart when discussing the structure with students. The chart can found at (double check for an updated chart): <https://www.txcourts.gov/media/1451767/court-structure-chart-february-2021.pdf>

## The student will be able to identify the role of precedents in the American legal system.

1. In the American legal system, the Constitution accepted most of the English common law as a starting point for American law.
2. In the American system, judges are obliged to make their rulings as consistent as reasonably possible with previous judicial decisions on the same subject.
3. Each case determined by an appellate court becomes a precedent, or guideline for subsequent decisions involving similar disputes, unless these decisions are found to be unconstitutional by the Supreme Court; they preempt the “common law precedent cases.”
4. Precedent is generally established by a series of decisions. Sometimes, a single decision can create precedent. For example, a single statutory interpretation by the highest court of a state is generally considered originally part of the statute.

## The student will be able to discuss the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Constitutional Amendments as they relate to inmate rights.

**INSTRUCTOR NOTE:** The bullet points included in this objective are intended as summary points. Engage the students in discussion about how this manifests and relates to inmate rights.

1. First Constitutional Amendment
   1. Inmates’ free exercise of religion
   2. Inmates’ right of speech

Note: Historically this has been about the censorship of incoming and outgoing mail.

* 1. Inmates’ access to media
  2. Inmates’ right to associate and assemble

1. Fourth Constitutional Amendment
   1. Establishes protection against unreasonable search and seizures of property by government

**INSTRUCTOR NOTE:** Discuss the following with the students: What has been the court’s opinion on a reasonable expectation of privacy inside of an inmate’s cell?

1. Fifth Constitutional Amendment
   1. Forbids double jeopardy, protects against self-incrimination, and requires that due process of law be a part of any proceeding that denies a citizen, “life, liberty or property”
   2. Entitles every inmate access to the courts and what it entails
2. Sixth Constitutional Amendment
   1. Guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you
   2. Stresses the right to assistance of counsel for defense
3. Eighth Constitutional Amendment
   1. Prohibits cruel and unusual punishment; mentions excessive fines and bail
   2. Recent litigation has included mandatory participation in rehabilitative programs, deliberate indifference cases, and housing of transgender inmates
   3. The Supreme Court established a two-prong test for determining if conditions violate this amendment
4. Objective – To determine whether conditions of confinement are objectively serious enough to violate the amendment
5. Subjective – Prisoner must show a “sufficiently culpable state of mind” on the part of responsible prison officials (knowledge and failure to take reasonable action)
6. Fourteenth Constitutional Amendment
   1. Addresses equal protection of laws
   2. Historically involved due process rights and the racial segregation of inmate populations

## The student will be able to discuss the history of corrections in the context of the legal system.

1. In the early 1800s public humiliation was the most viewed avenue to repentance.
   1. Pillories or stockades were used to confine the heads of beggars and drunkards so they could not avoid public gaze.
   2. Thieves were branded with the letter “T.”
   3. Scolds were swung out over the river and dunked into the water to cool their heated tongues.
2. Later in the 1800s isolation and silent reflection were the primary methods implemented to achieve reform.
3. In the 1870s obedience and hard work became the pillars of reformation.
   1. During the day, inmates worked in lockstep formation. Inmates were punished for any type of communication with other inmates and were expected to work in silence.
   2. In the evening, inmates returned to their cells for silent reflection.
4. In the early 1900s progressives shifted from deterrents to rehabilitation.
   1. This philosophy established that people engaged in criminal behavior based on circumstances that were outside of their control, and that these factors could be addressed or fixed.
   2. Throughout history the obstacles of this philosophy included:
      1. Could this be accomplished in a confined setting?
      2. How much time does it take to accomplish the needed change?
      3. With limitations on programming, experts’ inmates would languish indefinite amounts of time before being able to convince officials they had changed.
   3. This philosophy soon gave way to probation and parole. Experts argued that the non-custodial sanctions, would facilitate the individualized treatment required to address diverse motivations for engaging in a criminal lifestyle.
   4. Punishment is still the foundation of corrections because of criminal behavior.
5. Historically the courts did not tamper with the administration of correctional systems. (*Bell v. Wolfish* and *Rhodes v. Chapman*)
   1. It was not until 1972 the courts assumed the opinion that, “Federal courts sit not to supervise prisons and jails, but to enforce the rights of all persons, which happens to include prisoners.”
   2. The courts acknowledge that prison officials must be afforded the latitude is the administration of prison affairs, and that the prisoners necessarily are subject to appropriate rules and regulations.
   3. This time frame was the introduction of the courts affirming that federal courts have the responsibility to scrutinize prison practices which allegedly violate the constitution.

# UNIT 2. Liability for Jail Personnel

## The student will be able to discuss the concept of protected interests.

1. Protected interests can go beyond those interests specifically protected by the U.S. Constitution.
2. The language of the fourteenth amendment requires the provision of due process when an interest in one’s life, liberty or property is threatened.
3. An expansion of liberty rights has evolved from its original definition to include freedom from physical restraint.
   1. One evolution of this interest has been the right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security.
   2. Liberty interest cases have grown to involve prisoner and inmate rights.
      1. *Meachum v. Fano.* The court held that the inmate had no right to remain at his originally assigned prison.
      2. *Vitek v. Jones*. The court added that an inmate or prisoner could not be transferred to a state mental hospital for treatment without the previous findings that the prisoner or inmate “suffers from a mental disease or defect and cannot be given treatment in that facility.”
      3. *Sandin v. Conner*. The court decided that 30 days of solitary confinement was not atypical.
      4. *Wilkinson v. Austin*. The court implied an inmate could not lose certain privileges without due process if those privileges would expedite the inmate’s release.
4. The expansion of the concept of property rights beyond its common law roots came from the courts concluding that certain interests that fall short of the traditional definition of “property” was nonetheless an important part of a person’s economic well-being.
   1. This provided the decision that when something is declared to be only a privilege, that meant that no procedural due process was required before depriving a person of that interest. The reason being, “If a government was under no obligation to provide something, it could choose to provide it subject to whatever conditions or procedures it found appropriate.”
   2. Those conditions and procedures may not infringe on any other constitutional rights such as free speech. This is known as an unconstitutional condition.
   3. This concept implies that the simple declaration of something being a privilege is not indefinite. For instance, the privilege of commissary access could one day become a protected right.

## The student will be able to discuss the effects that Texas Jail Standards have on liability issues.

1. In 1975 the Texas Legislature created the Texas Commission on Jail Standards (TCJS) to end federal court intervention into county jail matters and return jail control to state and local jurisdictions.
2. Currently, through Chapters 499 and 511 of the Government Code, the State has proven a strong commitment to improving conditions in jails by granting the Commission the authority to enforce these minimum standards.
3. The establishment of minimum standards has liability implications for any facility failing to meet the minimum standards. Countries found to be non-compliant will have a jail inspection report posted to the TCJS website. Once compliant, the citation is removed from the TCJS website.

## The student will be able to outline the extent of inmates’ right to protection based upon the Constitution, court cases, and state jail standards.

1. Inmates, as a product of incarceration, do not forfeit all rights. Inmates are still afforded rights while many liberties are suspended; the term “many” does not equate to “all” rights being suspended.
2. *Bell v. Wolfish* (1979) stated that pretrial detainees have a due process right to be free from punishment. This decision requires pretrial detention facilities and jails to provide a safe and secure environment, free from punishment without due process.
3. Texas Government Code Chapter 511 establishes the creation of the Texas Commission on Jail Standards, which ensures the safe operations of Texas Jails.

## The student will be able to identify the importance of having written agency policies and procedures and the liability that arises when it is poorly written or not followed.

1. Facilities should have clear and concise written directives for staff, offenders, and the community. Well-written policies and procedures informs and governs staff behavior, sets clear expectations, and confirms that administration has performed its role. Policy should relate to a legitimate correctional outcome, prevailing standards, or the goal that implementing a policy seeks to achieve. Legitimate correctional outcomes are things such as safety, security, sanitation, inmate welfare, inmate rights, and due process.
2. Although both policies and procedures hold the department accountable for their actions, policies tend to be considered more legally significant. Policies themselves can be found to be illegal or unconstitutional if they are found to be inconsistent with statutory or regulatory requirements.
3. Policies that are not updated, or are out of date, may no longer follow evolving statutes.
   1. Simply updating policies and procedures is not enough. Staff must be made aware of the updates and trained on the proper application of policies and procedures.
   2. *Monell v. Department of Social Services* established that an agency or local government could be sued as a “person” in a civil action for violating constitutional rights.

Note: The plaintiff must show that the violation of their rights resulted from an agency’s official policy and practice.

1. By clearly outlining expectations and practices, well-maintained policies can prevent incidents that could lead to lawsuits. A policy is generally considered official when it is formally issued with a signature and a date and approved by the agency CEO or administrator.
2. Maintaining thorough policies is a best practice to avoid litigation related to deliberate indifference.

## The student will be able to list the types of legal actions that are available to inmates for redress against claims of abuse.

1. Statute 42 United States Code Section 1983 – Victims of civil rights violations can sue “people” who act under color of law.
   1. People act under color of law when they act under authority given by a governmental agency.
   2. There are two types of remedies under a successful 1983 claim:
      1. Injunctive relief is a court order requiring a person or entity to do or refrain from doing a specified act.
      2. The courts can award monetary damages for compensation as well as punitive damages which aims to cover:
         1. Medical expenses
         2. Lost wages
         3. Reduced earning capacity
         4. Pain and suffering
         5. Loss of a specific liberty
2. Bivens claim
   1. Federal officials can only be sued under section 1983 if they act alongside state or local officials.
   2. A Bevins claim is a path for legal relief against federal officials acting on their own.

## The student will be able to explain how and why they can be held personally and financially liable for judgments against them.

1. Officers may be held personally and financially liable for negligence, violations of constitutional rights, and criminal misconduct.
2. Negligence is conduct in which a person ignores a known or obvious risk or disregards the life and safety of others.
3. A violation of constitutional rights involves a violation of the following areas:
   1. The right to humane facilities and conditions
   2. The right to be free from sexual crimes
   3. The right to be free from racial segregation
   4. The right to express condition complaints
   5. The right to assert their rights under the Americans with Disabilities Act (ADA)
   6. The right to medical care and attention as needed
   7. The right to appropriate mental health care
   8. The right to a hearing prior to any liberties are infringed
   9. Other specific rights are included in constitutional amendments
4. According to the U.S. Department of Justice, the most common allegations of criminal misconduct of law enforcement officers involve:
   1. Excessive force
   2. Sexual misconduct
   3. Theft
   4. False arrest
   5. Deliberate indifference to serious medical needs
   6. Substantial risk of harm to a person in custody
   7. Preventing victims or witnesses from reporting misconduct
   8. Lying to federal state or local officials during an investigation into the potential misconduct

## The student will be able to identify situations where action or inaction may result in liability for failure to protect based on recent case law.

**INSTRUCTOR NOTE:** Instructors are encouraged to provide students with the background of the listed litigation and discuss the liability of the officers involved and the precedent which has been set by the case.

1. *Cantu v. Jones*, 293 F.3d 839, 844 (5th Cir. 2002) “The Supreme Court has held that the treatment a prisoner receives and the conditions under which they are confined are subject to scrutiny under the Eighth Amendment.”
2. *Taylor v. Stevens,* 946 F.3d 211, 221 (5th Cir. 2019) “Deliberate Indifference cannot be inferred merely from a negligent or even a grossly negligent response to a substantial risk of serious harm.”
3. *Torres v. Livingston* (Filed on August 24, 2020) This case is an excellent demonstration of the precedence which was established in the two previous cases.

# UNIT 3. Use of Force

## The student will be able to define force and use of force.

1. Force is defined as an aggressive act committed by any person, which does not amount to an assault and is necessary to accomplish one’s objective.
2. There is no universally accepted definition of use of force; however, use of force can be defined as “physical action taken by a law enforcement professional to restore, establish, or maintain control of an inmate, a subject, or a situation.”

Note: Ideally, a law enforcement professional is able to gain cooperation in situations with an uncooperative subject through the use of verbal persuasion and other de-escalation skills. However, there are situations where the use of force is unavoidable and, in these instances, individuals must “use only the amount of force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others.”

## The student will be able to identify legal obligations regarding use of force.

**INSTRUCTOR NOTE:** Use of force and deadly force are issues addressed in several ways.

1. Texas Penal Code
   1. 9.01 DEFINITIONS
   2. Escape – unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.
   3. Deadly Force – force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.
   4. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a correctional facility or a peace officer is justified in using any force, including deadly force, that he reasonably believes to be immediately necessary to prevent the escape of a person from the correctional facility.
   5. 9.53. MAINTAINING SECURITY IN CORRECTIONAL FACILITY. An officer or employee of a correctional facility is justified in using force against a person in custody when and to the degree the officer or employee reasonably believes the force is necessary to maintain the security of the correctional facility, the safety or security of other persons in custody or employed by the correctional facility, or his own safety or security.
2. Amendments
   1. Fourth Amendment

**INSTRUCTOR NOTE:** The fourth amendment is important for background information to establish the current decision for *Kingsley v. Hendrickson*.

* + 1. *Graham v. Connor* provided us with the Objective Reasonableness test. The Objective Reasonable test contains the following prongs:
       1. The severity of the crime at issue
       2. Whether the suspect poses an immediate threat to the safety of the officer or others; and
       3. Whether he is actively resisting arrest or attempting to evade arrest by flight.
    2. This is the standard for arrestee status prior to incarceration, not for jail operations.

**INSTRUCTOR NOTE:** In a poll conducted in 2018 in a Justice Clearinghouse webinar (Legal Issues in Today’s Jail: Use of Force presented by Carrie Hill), it was discovered that many agencies maintain this test for jail operations.

* 1. Eighth Amendment
     1. Generally addresses the use of force for convicted inmates. The primary cases are:

1. *Whitley v. Albers*, 475 U.S. 312 (1986)
   * + 1. For situations involving exigent circumstances only; the standard is not considered the deliberate indifference standard.
       2. Was the force applied in a good faith effort to maintain or restore discipline or was the force maliciously and sadistically for the purpose of causing harm?
2. *Hudson v. McMillian*, 530 U.S. 1(1992) (5-part test)
3. Threat perceived by a reasonable officer
4. Need for the use of force
5. Amount of force selected used in relation to the need for a use of force
6. Effort(s) made to temper forceful response
7. Extent of the Injury
   1. Fourteenth Amendment
      1. Covers pretrial detainees and is considered the standard for deciding excessive force claims within a jail setting.
      2. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015)
8. This case established one universal standard for all use of force incidents regardless of conviction status.
9. The Supreme Court established that a pretrial detainee need only show that the force used against him was “objectively unreasonable” to prevail on an excessive force claim. The determination must be made from the perspective of a reasonable officer on the scene, including what the officer knew at the time, and must account for the “legitimate interests stemming from the need to manage the facility.”
10. An objective standard is appropriate to judge the mental state of law enforcement officers in actions giving rise to civil rights claims of excessive force under 42 U.S.C. 1983. The inquiry into whether the officer purposely or knowingly used unreasonable force should be evaluated according to the perspective of a reasonable officer in the defendant's position with the defendant's knowledge.
11. The courts noted that *Hudson v. McMillian*’s five-part test could be applied to “illustrate the types of objective circumstances” when making determinations whether the force was objectively unreasonable.
12. This establishes a nine-part test to apply:
13. What is the threat perceived by a reasonable officer?
14. Whether the inmate poses an immediate threat to the safety of the officers or others.
15. The need for use of force as the appropriate response to the perceived threat.
16. The amount of force chosen in relation to the need for force.
17. Efforts made to temper the severity of the forceful response.
18. Extent of the injury to the inmate (one factor to be considered).
19. Severity of the security problem at issue.
20. Whether the inmate was actively resisting.
21. The legitimate governmental interest in managing the facility (for the force).

**INSTRUCTOR NOTE:** From the 2018 Justice Clearinghouse webinar (Legal Issues in Today’s Jail: Use of Force presented by Carrie Hill).

## The student will be able to identify specific circumstances where there is legal justification for a use of force.

Chapter 9 of the Penal Code contains legal justifications for use of force, including:

1. 9.31—Self Defense
2. 9.32—Deadly Force in Defense of Person
3. 9.33—Defense of Third Person
4. 9.34—Protection of Life
5. 9.51—Arrest and Search
6. 9.52—Prevention of Escape from Custody
7. 9.53—Maintaining Security in a Penal Institution

## The student will be able to identify situations when use of chemical agents is appropriate.

1. Chemical agents are intended and designed to be used as disabling agents, to attempt to overcome resistance, and to subdue persons with minimal injuries to officers, inmates, and others. Chemical agents have been effective against disturbances involving a number of people as well as those individuals actively resisting individuals.
2. Recent documentation regarding the use of chemical agents is in reference to policies surrounding the level of force as well as the decision to the particular level of force.
   1. February 2020 – U.S. Immigration and Customs Enforcement (ICE) detainees settled their suit against GEO private holding facility. Within the list of complaints included the use of OC spray and the subsequent use of hot water on only some of the subjects for decontamination. The private facility had policies specifically declaring the use of chemical agents to be a harsh level of force and is not allowed for passive levels of resistance.
      1. Hot water was alleged to worsen the effects of the chemical agent
      2. Not all subjects were provided decontamination
      3. Subjects were being passively resistive, and they alleged the level of force was excessive.
   2. Several suits across the country—specific to the use of chemical agents on mentally ill inmates—have brought attention to policies and the use of chemical agents.
      1. Federal judges in the 9th circuit are quoted in stating, “The use of large amounts of pepper spray on mentally ill inmates is a horrific violation of their constitutional rights.”
      2. Cumberland County Jail faced allegations of misconduct when jail staff used chemical agents on inmates prior to their transport to a psychiatric facility.
      3. Captain James Kirkland was charged criminally on charges of felony battery in 2014 for his policies and directives to arbitrarily use OC spray on inmates for noise levels and “disturbances.”

## The student will be able to identify approaches to reducing liability and when a supervisor may be held liable for use of force incidents.

1. Approaches to reducing liability
2. Proactive approach – Actions that attempt to forecast future or potential risk occurrence/exposure; commitment to the selection and hiring of high-quality candidates, establishing and following sound policies and procedures, and providing employees with current, relevant, and proper skills-based training
3. Active approach – Identify concerns before an event happens and implement actions to address risk before it happens; utilizes direct supervision with proper ratios for oversight and involves audits, inspections, surveys, and voluntary reporting
4. Reactive approach – Attempts to mitigate severity of event as a response to a specific occurrence; involves incident reports and discipline, remediation, evaluation, and analysis

**INSTRUCTOR NOTE:** Engage the students in a discussion of these approaches further manifest in the facility and how the use of multiple approaches reduces the overall risks and liability.

1. Failure to discipline or supervise
   1. Supervisor Liability
      1. The supervisory official, after learning of the violation, failed to remedy the wrong
      2. The supervisory official created policy or custom under which the constitutional practice has occurred or allowed such a policy or custom to continue; or
      3. The supervisory official was grossly negligent in managing the subordinates who caused the unlawful condition or event.
   2. Relevant cases
      1. *Kitchen v. Dallas County Texas*, Civ No 13-10545 (5th Cir. July 14th, 2014)
         1. The inmate claimed officers used excessive force while extracting him from his cell, which ultimately lead to his asphyxiation and death.
         2. The medical examiner declared this a homicide caused by “complications of physical restraint including mechanical asphyxia” due to “neck restraint during struggle.” Officers performed a “neck controlled takedown” to bring him down to the floor.
         3. Some defendants were found to have acted with deliberate indifference to his medical needs during the incident by failing to contact the jail’s medical personnel prior to extracting the inmate from his jail cell.
         4. Further proceedings were needed to consider individual defendants’ liability for use of force or bystander liability.
         5. The question was asked “if you are present and fail to act or fail to prevent in excessive force, will you be held liable and ultimately the findings lead to further proceedings?”
      2. *Carrasco, et al. v. Atencio*, 138 S. Ct. 355 (2017)
2. The 9th Circuit applied the principle of integral participation.
3. Integral participation will include jailers who use a reasonable amount of force as codefendants with jailers who use unreasonable amounts of force.
4. This case was a multijurisdictional use of force within the jail and increases the importance of report writing.
5. If a supervisor has knowledge of misconduct but fails to act, the supervisor may be found liable.

## The student will be able to identify the importance of report writing for use of force incidents.

1. Reports in a jail environment need to be comprehensive and paint the full picture. Because the facts are so unique to each situation requiring a use of force, you must articulate the total picture as it may vary from circumstances that established previous precedence.
2. With Kingsley v. Hendrickson as the standard, officers should write reports in such a manner that their perspective is clearly presented in why their decision was made.
3. No matter how an agency classifies or categorizes use of force incidents, it is critical to accurately report and track them in a timely manner.
   1. Document the precipitating and triggering events, including who initiated the event and what triggered the application of force.
   2. Detail the justification for force used and describe any escalation of the force. Carefully detail the escalation in the levels with specific details on how the lower levels failed to gain compliance. Also document any level of injury.
   3. Document the medical aid rendered once the threat is neutralized and/or compliance is achieved. Document the aftermath to link response to professionalism and an officer’s adherence to agency policy.
   4. Route for immediate supervisory review of the report in accordance with agency policy and ideally before the shift ends. Reviews ensure that pertinent information is completely and correctly included, that witness and officer statements were gathered, and that any investigations into misconduct commence.
4. Best practices state that jailers should train to write reports addressing the nine-part test as it relates to use of force reports.

**INSTRUCTOR NOTE:** It is suggested that instructors review samples of use of force reports with the students to critically evaluate the prepared report.

## The student will be able to outline the reasons for having a protocol regarding investigations of use of force.

1. Agencies typically work to build community trust and respect. Development of protocol prior to an investigation will help agencies articulate how an investigation will occur, promote confidence that a fair and objective investigation will occur, and enhance the sense of justice. The development and codification of a process will ensure that all entities know and understand their roles, thereby maximizing the likelihood that the process will be followed and increasing the likelihood that a fair and accurate determination of facts related to an incident will be made.
2. An agency should develop and regularly review its use-of-force investigation processes and procedures in order to ensure that the investigation of a use-of-force incident is objective, transparent, and comprehensive. The investigative process in a use-of-force incident should include composing an investigative team, articulating the investigative process (e.g., conducting officer and witness interviews, gathering evidence, and viewing video related to the incident), and developing findings of fact to provide to the prosecution.
3. A single use of force can undermine that effort and jeopardize community confidence in the integrity of the agency or office.
   1. Administrative investigations oftentimes reveal discrepancies in witness and officer statements. These discrepancies need to be identified and explained.
   2. Administrative investigations may also reveal minor discrepancies about the incident. Addressing minor discrepancies prevent others from getting wrapped around the discrepancy instead of focusing in on the substantive issues.
4. Administrative investigations provide an opportunity to conduct an after-action report to ask important questions prior to incidents becoming civil issues.
   1. A systematic approach to investigating uses of force allows agencies to identify patterns of behaviors in officer decision making.
   2. Agencies should document the findings of any and all investigations for future reference and to help the agency better prepare for future incidents.
   3. In the event further training is required, agencies may take a proactive approach to addressing this area.
   4. Challenges individuals to question previously held assumptions and beliefs, which leads to smarter thinking and more effective response and adaptation to emerging challenges in the future.

**INSTRUCTOR NOTE:** Refer to the publication “How to Conduct an After Action Review” found at: <https://www.policefoundation.org/wp-content/uploads/2020/02/How-to-Conduct-an-AAR.pdf> to discuss how to leverage best practices that apply to responses and incidents within corrections.

# UNIT 4. Classification of Inmates

## The student will be able to discuss legal liability issues related to classification.

1. The eighth amendment’s protection against cruel and unusual punishment comes in to play when classifying inmates for housing if considerations are not made to protect the potentially innocent from violence and sexual abuse.
2. The fourteenth amendment’s due process clause ensures inmates are not punished without due process. This is why the current offense is not the only factor for assigning inmates housing.

## The student will be able to recognize the need to provide special supervision and protection to certain types of inmates.

1. Inmates housed in pretrial detention settings have a variety of factors which contribute to their classification.
   1. The process should identify inmates who or violent, predatorial, or at risk for victimization.
   2. Inmates who are at risk for victimization should not be assigned housing with violent and predatorial inmates.
2. Jails are required to provide for the care, custody, and control of their facilities.
   1. One of the largest liabilities today is related to the protection of transgender inmates.
   2. Other areas of protection include protecting inmates who have ceased gang affiliation, inmates who have charges involving sex crimes, or inmates who have charges involving crimes against the elderly.

## The student will be able to identify the benefits of thorough and accurate report writing to classification decisions.

1. Thorough and accurate reports are necessary to distinguish aggressors from those who are more vulnerable.
   1. PREA vulnerable inmates should never be assigned housing with those who are determined to be PREA aggressors.
   2. A range of strategies exists to maintain vulnerable people in general population—instead of high security segregation—safely without resorting to isolation. A key element of these strategies is individualized decision making. If someone is flagged as vulnerable to sexual abuse based on screening, interviews, and other documentation, corrections professionals—including medical and mental health staff—should review that case, talk to the individual, and make (in consultation with others) informed decisions about where that person could be housed, work, and program within the confinement setting with the least risk and the most constructive activities.

**INSTRUCTOR NOTE:** Refer to the publication Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails for additional strategies regarding classification decisions.

* 1. Some jurisdictions have established housing units with strict regulations regarding assignment into the housing unit. Some of those restrictions include:
     1. No one who screens as a PREA aggressor is allowed to be housed within that housing unit.
     2. Creating units large enough to separate housing options for those who screen as vulnerable.

1. Identifying certain behaviors may assist medical and mental health personnel with determining the most appropriate housing options for a given inmate.
   1. Mission specific housing targets special needs populations, such as those with mental illness, developmental, and intellectual disabilities.
   2. Programming can be specially designed for these target populations and dramatically reduce recidivism.
2. TCJS establishes in Rule 271.6: “Records shall be maintained on classification assessments, housing, work and program assignments, reassessments and appeals.”
   1. Initial classification assessments are established to assign inmates appropriate security levels prior to housing assignments being made.
   2. Behavioral histories while housed will impact future reassessments.
   3. Participation in work programs and other programs may impact future reclassification assessments.
3. By establishing systems to protect vulnerable populations an agency can reduce their liability.

# UNIT 5. Inmate Separation

## The student will be able to explain the difference between the four types of separation.

1. Administrative separation is used for managerial purposes, including as a response to an inmate who demonstrates a chronic inability to adjust to the general population, or when authorities believe an inmate’s presence in general population may cause serious disruption to the orderly operation of the institution.
2. Disciplinary separation (also referred to as punitive separation) is a form of punishment for inmates who violate facility rules.
   1. When an institutional violation occurs, a staff member may write up the inmate for the misconduct.
   2. TCJS §283.1 establishes due process procedures for disciplinary hearings.
   3. If an inmate is found guilty or signs a waiver of the hearing process, a range of sanctions may be imposed.
3. Protective custody is used to separate vulnerable inmates from the general inmate population due to personal physical safety concerns.
4. Temporary separation is the placement of an inmate in restrictive housing that can occur based on a facility’s inability to assign inmates in general housing because of the need to keep inmates separated for safety reasons, or a pending investigation, which requires inmates to be separated.

**INSTRUCTOR NOTE:** The types of separation are covered in the National Institute of Justice publication Restrictive Housing in the U.S.

## The student will be able to state the due process requirements for disciplinary separation.

1. TCJS established in Rule 271.1 the following requirements for administrative and disciplinary separation:
   1. The status of inmates placed in administrative separation shall be reviewed and documented at least every 30 days for continuance of status;
   2. Inmates housed in administrative separation shall retain access to services and activities, unless the continuance of the services and activities would adversely affect the safety and security of the facility;
   3. Inmates in administrative separation shall be provided access to a day room for at least one hour each day;
   4. Inmates on disciplinary separation shall be provided a shower every other day.
2. Custody reviews shall be conducted immediately upon any disciplinary action and/or change in legal status which would affect classification.
3. TCJS established in Rule 283.1 the following due process requirements for disciplinary separation:
   1. Provisions shall be made for a disciplinary hearing before a neutral and impartial board or officer which shall not include anyone involved in the claimed violation or charges;
   2. Provisions shall be made for the selection of a disciplinary board and disciplinary officer. In facilities of 50 capacity or less, this may be one person. Disciplinary hearings may be conducted by a disciplinary officer for incidents defined as Minor Infractions;
   3. Provisions shall be made for at least twenty-four hours written notice to be given to the inmate of the claimed violation or charges against him/her;
   4. Provisions may be included for inmates to waive the right to a disciplinary hearing provided proper notification is given prior to the signing of the waiver.
      1. The waiver shall include the appropriate identification of charges, the allowable sanctions, and the sanctions offered by the waiver;
      2. A waiver shall not include the loss of good time as a sanction;
   5. Provisions shall be made for the disclosure of the evidence against the person charged with the violation, although confidential informants may be protected;
   6. Provisions shall be made for an opportunity to be heard in person and to present documentary defensive evidence when not unduly hazardous to institutional safety and correctional goals;
   7. Provisions shall be made for inmates to call relevant witnesses on his or her behalf for disciplinary hearings when not unduly hazardous to institutional safety and correctional goals;
   8. Provisions should be made permitting the inmate to seek the aid of another inmate if the inmate is illiterate or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case. If that is not permissible, substitute aid from the staff or from an inmate designated by the staff shall be provided;
   9. Provisions shall be made for a written statement by the disciplinary board or disciplinary officer at the conclusion of the hearing indicating the evidence relied upon and reasons for the disciplinary action taken. The statement shall be delivered to the inmate and the Sheriff/Operator and shall be placed in the inmate's disciplinary file;
   10. Provisions shall be made for a documented appeals process, if requested by the inmate, by a person or persons not a member of the disciplinary board.

**INSTRUCTOR NOTE:** The *Wolf vs. McDonald* court case established the processes defined by TCJS minimum standards for the disciplinary due process. In reference to due process for administrative separation, the only requirements come from a continuance of status evaluation established in §271.1 stating, “The status of inmates placed in administrative separation shall be reviewed and documented at least every 30 days for continuance of status.”

## The student will be able to identify unconstitutional conditions of administrative separation.

1. Conditions in restrictive housing have oftentimes been criticized as being inhumane and characterized by some to be cruel and unusual punishment.
   1. *Palakovic v. Wetzel* 854 F.3d 209 3rd Cir. 2017
      1. The argument in this case was that the use of restrictive housing disproportionately affected those afflicted with mental illness.
      2. Arguments regarding the level of care provided to those in administrative separation who are diagnosed with mental illness is the central focal point of this case.
   2. *Trent Michael Taylor v. Robert Riojas, et al*. No. 19-1261. November 2020
      1. Officers were held liable after an inmate was placed in a pair of “shockingly unsanitary cells.”
      2. The first cell was described as, “covered, nearly floor to ceiling, in ‘massive amounts’ of feces: all over the floor, the ceiling, the window, the walls, and even ‘packed inside the water faucet.’”
      3. Officers then moved Taylor to “a second, frigidly cold cell, which was equipped with only a clogged drain in the floor to dispose of bodily waste.”
      4. The conditions were cited as, “the drain to overflowed forcing raw sewage to spill across the floor. Because the cell lacked a bunk, and because Taylor was confined without clothing, he was left to sleep naked in sewage.”
2. The use of administrative separation has been cited to be unconstitutional for mentally ill inmates.
   1. *Madrid v. Gomez*; Simon, 2014
      1. Within this case the findings included the gross negligence of alternative care for inmates suffering from mental illness.
      2. Staffing levels to facilitate the supervision of inmates assigned to the restrictive housing units were severely lacking.

# UNIT 6. Medical and Mental Health Care Treatments for Inmates

## The student will be able to explain the constitutional standard of deliberate indifference to serious medical needs of inmates.

1. Deliberate indifference is the conscious or reckless disregard of the consequences of one's acts or omissions. It entails something more than negligence but is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.
2. Deliberate indifference is covered in the fourth, eighth, and fourteenth amendments.
   1. *Belbachir v. County of McHenry* (7th Cir. 2013) established a claim for deliberate indifference and the fourth amendment unreasonableness in a 1983 case.
   2. In *Estelle v. Gamble,* the Supreme court ruled that deliberate indifference can constitute cruel and unusual punishment.
   3. Gordon v. County of Orange, in conjunction with *Kingsley v. Hendrickson*, the 9th circuit ruled that deliberate indifference of a pretrial detainee is a violation of the fourteenth amendment due process clause.
3. Deliberate indifference occurs when a professional knows of and disregards an excessive risk to an inmate’s health or safety. Even though it is difficult to identify what does and does not constitute deliberate indifference, courts have recognized several factual scenarios where deliberate indifference exists.
   1. Intentionally refusing to respond to an inmate’s complaints.
   2. Intentionally delaying medical care for a known injury.

## The student will be able to discuss the legal obligations of administrators to provide systems for identifying health problems, handling emergencies, and providing routine health care needs of inmates.

1. There are two groups of individuals who have a constitutionally guaranteed right to access medical care:
   1. Individuals remanded to mental health facilities, and
   2. Individuals arrested or incarcerated in prisons, jails, and community correctional or juvenile facilities.
2. This constitutional right to care stems from the fact that we, society, have taken their rights of freedom through arrest and incarceration; therefore, we, society, have taken on the duty for their safety by virtue of our exercising care, custody, and control over these groups.
3. TCJS §273.2 establishes that each facility shall have and implement a written plan for inmate medical, mental, and dental services. The plan shall:
   1. Provide for efficient and prompt care for acute and emergency situations
   2. Provide procedures that shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody
   3. Provide procedures that shall give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional

## The student will be able to identify trends in case law and legislation concerning inmates suffering from mental illness or intellectual and developmental disabilities.

1. The topic of mental illness and restrictive housing has been a point of contention for over a century. According to the National Institute of Justice, research has consistently demonstrated that prisoners in restrictive housing settings have higher rates of diagnosed mental disorders, higher rates of psychiatric symptoms (as measured by symptom rating scales), and more severe psychiatric symptoms than inmates in the general prison population.
2. Recent national trend in case law: *Palakovic v. Wetzel* 854 F.3d 209 (3d Cir. 2017)
   1. During his incarceration, Palakovic was diagnosed with multiple serious mental illnesses, including impulse control disorder, antisocial personality disorder, and alcohol dependence.
   2. Palakovic was repeatedly sent to thirty-day stints in solitary confinement, stating the cause was in response to behaviors that were caused by his illness. Palakovic disclosed previous suicide attempts and acquired the nickname “Suicide” by fellow inmates.
   3. He only received mental health interviews for one or two minutes at a time through an opening in his door. Because he was not provided substantial counseling opportunities or group therapy, the courts found that the facility was deliberately indifferent based on these being inhumane conditions of confinement.
      1. Officials stated the first objective prong of the deliberate indifference test—the existence of a substantial risk or serious harm—was met regarding segregation’s potential to, “cause severe and traumatic psychological damage.”
      2. The second subjective prong—that facility officials had knowledge of the risk but recklessly disregarded it—was met simply by the facility’s diagnosis of inmate Palakovic which indicated their knowledge of his illness, and that past issues of other inmates’ self-harm indicated knowledge of the risks of segregation.
   4. Ultimately, this court case found that the use of solitary confinement against those with serious mental illness ‘may’ be considered a violation of an inmate’s protection against cruel and unusual punishment.
3. Other national trends include:
   1. *Madrid v. Gomez* 889 F. Supp. 1146 (N.D. California 1995)
   2. Advocacy groups such as ‘Human Rights Watch’ have petitioned the courts to end the use of segregation in totality.
   3. U.S. Senate passed the Mentally Ill Offender Treatment and Crime Reduction Act which included funding for mental health courts and diversion programs.

**INSTRUCTOR NOTE:** Refer to the Mentally Ill Offender Treatment and Crime Reduction Act fact sheet at: <https://csgjusticecenter.org/wp-content/uploads/2020/02/MIOTCRA_Fact_Sheet.pdf> for additional information.

* 1. In 2018, Yale law school received grant funds to conduct a report of inmates held in solitary confinement throughout the United States, which prompted a response from the American Correctional Association issuing standards forbidding states from holding mentally ill prisoners in isolation cells for prolonged periods of time.
  2. On December 1, 2020, the Stepping Up Initiative published information related to the prevalence of mentally ill inmates in jails in the midst of the COVID-19 pandemic.
     1. While jail populations have seen a reduction since the onset of the pandemic, systematic changes have sparked an increase in mentally ill people being placed in jail.
     2. Those systemic changes related to the pandemic are the fact that many state hospitals have stopped taking new patients and homeless shelters have shut down in some cases or increased admission requirements.

Instructor Note: The Stepping Up Initiative and the National Association of Counties have published case studies (<https://www.naco.org/resources/featured/stepping-initiative-special-topics-case-studies>) and a toolkit (<https://stepuptogether.org/toolkit>) for use in discussing mental illness in jails.

1. Texas Legislation was dramatically impacted by the death of Inmate Sandra Bland in Waller County on July 13, 2015.
   1. A law enforcement officer has 12 hours from the time someone is taken into custody to notify a magistrate if an inmate is suspected of having a mental illness or an intellectual/developmental disability.
   2. A mental health assessment must occur within 96 hours after a magistrate requests an assessment be completed.
   3. The Code of Criminal Procedure was amended to require each law enforcement agency to make a “good faith effort” to divert a person suffering from a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency’s jurisdiction if:
      1. There is an available and appropriate treatment center in the agency’s jurisdiction to which the agency is authorized to divert the person
      2. It is reasonable to divert the person
      3. The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence
      4. The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense
   4. The Code of Criminal Procedure was amended to require a magistrate to “release a defendant on personal bond unless good cause is shown otherwise if the defendant is examined by the local mental health or intellectual and developmental disability authority or a certain other mental health expert and an applicable expert, in a certain written assessment concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial, and recommends mental health treatment or intellectual disability treatment for the defendant, as applicable.”
   5. The Sandra Bland Act requires county jails to:
      1. Give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day
      2. Give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day, or if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional
      3. Install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals. The Legislature created an account titled the Prisoner Safety Fund, and counties that operate a jail that is 96 beds or less may apply for grants to assist in paying for the capital improvement upgrades, such as electronic sensors and possibly cameras.
   6. On or before the fifth day of each month, the sheriff of each county must report to the Commission any of the following incidents that happened in the county jail during the prior month:
      1. Suicide
      2. Attempted suicide
      3. Death
      4. Serious bodily injury, as that term is defined by Section 1.07, Penal Code
      5. Assault
      6. Escape
      7. Sexual Assault
      8. Any Use of Force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code
   7. On the death of a prisoner in a county jail, the Commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.
   8. The Commission must adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination is authorized to be immediately removed from the position and is prohibited from being reinstated until the person passes the examination. The sheriff of a county must perform the duties of the jail administrator at any time there is not a person available who satisfies the examination requirements of this new section of law.
   9. The Occupations Code was amended to require that county jailer training include at least eight hours of mental health training approved by TCOLE and the Commission. Current license holders have until Aug. 31, 2021, to take an approved eight-hour course.
   10. As part of the minimum curriculum requirements, an officer must complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. The new language also requires TCOLE, as part of the minimum curriculum requirements, to require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

## The student will be able to identify various medical procedural issues prone to litigation.

**INSTRUCTOR NOTE:** Content for this section came from the resource “Beyond Estelle: Medical Rights for Incarcerated Patients.” When it comes to areas prone to litigation, Prison Legal News (an inmate advocacy group), leads litigation trends. Opinions were omitted and only the issues and cases were presented in this course material.

1. Medical decision making
   1. In 1975 the Supreme Court of New Jersey held that an inmate’s parents had the right to terminate medical care for their unconscious daughter. (*In re Quinlan*, 355 A.2d 647 (NJ 1976))
   2. In 1990 the U.S. Supreme Court found that an inmate’s parents had the right to act on her behalf to make medical decisions. (*Cruzan v. Director*, Missouri Department of Health, 497 U.S. 261 (1990))
   3. Convicted prisoners, like involuntarily committed mental patients, retain a limited right to refuse treatment and a related right to be informed of the proposed treatment and viable alternatives. (*White v. Napoleon* (897 F.2d 103 (1990)))
2. Medical privacy
   1. Health Insurance Portability and Accountability Act (HIPAA) was established in 1996, and the main purpose of the act was to protect patient health information.
   2. The unique circumstances of incarceration required a separate section under the Act. That section, 45 C.F.R. 164.512(k)(5), “Correctional institutions and other law enforcement custodial situations,” addresses permitted disclosures of patient health information (PHI) for prisoners.
3. Forced feeding protocols
   1. In 2008, the Supreme Court of Washington, in *McNabb v. Department of Corrections*, 180 P.3d 1257, 163 Wash.2d 393 (Wash. 2008), affirmed a lower court decision that held the prisoner-plaintiff could be force-fed and hydrated.
   2. As of 2020, the U.S. Supreme Court has not addressed the rights of prisoners who participate in hunger strikes. Legal cases for force-feeding often originate and are decided in state courts.
4. Forcible medication procedures
   1. In *Sanchez v. Pereira-Castillo*, 590 F.3d 31 (1st Cir. 2009), the First Circuit Court of Appeals agreed with the plaintiff, Inmate Angel Sanchez, that a surgical procedure conducted by doctors at the direction of corrections officials in Puerto Rico had violated his rights.
   2. Facility staff thought that Sanchez had a cell phone hidden in his rectum. Metal detector scans and an abdominal x-ray were done followed by constant surveillance for bowel movements. Sanchez was transported to the hospital where rectal exams were performed followed by an exploratory surgery, which required anesthesia without the inmate’s consent.

# UNIT 7. Inmate Right to Access the Courts

## The student will be able to identify some of the basic issues concerning an inmate’s right to access the courts.

1. “It is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.” *Johnson v. Avery*, 393 U.S. 483 (1969).
2. The inmate’s constitutional right of access to the courts is a fundamental freedom which includes, among other things, the right to correspond directly with them. *Storseth v. Spellman*, 654 F.2d 1349 (9th Cir. 1981).
3. Access to the courts may be denied if the inmate has no “legal standing” to challenge a particular practice or jail condition; but this decision is to be made by the court system, not the Sheriff or jail officers. *Leeke v. Timmerman*, 454 U.S. 83, 102 S.Ct. 69 (1981).

## The student will be able to explain the legal requirements of corrections facilities concerning access to law libraries and acceptable alternatives.

1. “The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” 430 U.S. at 828
2. Commenting on available alternatives, officials may consider in providing access to the courts, the Court stated: “This is not to say economic factors may not be considered, for example, in choosing the methods used to provide meaningful access. But the cost of protecting a constitutional right cannot justify its total denial.” *Bounds v. Smith*, 430 V.S. 817 (1977).
3. In 1977, the Supreme Court reaffirmed its decision in *Younger v. Gilmore*, 404 U.S. 15 (1971), and ruled again that reasonable alternatives are required if law libraries are not available. The court listed as possible acceptable alternatives the use of paralegals, paraprofessionals, law students, and legal associations. *Bounds v. Smith*, 97 S.Ct. 147 (1977). The court held the following in *Bounds*: “The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”
   1. Emphasis was placed on the term adequate in reference to the amount of resources available within the law library.
   2. Emphasis was also placed on the term adequate in reference to the level of assistance provided from a person “trained” in the law.
   3. Where a law library was not unquestionably accessible to the jail inmates and where counsels were not always willing to handle civil actions, the failure of the County to provide a law library in the county jail constituted a violation of the right of inmates’ access to the courts. *Leeds v. Watson*, 630 F.2d 674 (9th Cir. 1980).

# UNIT 8. Legal Issues Concerning Searches

## The student will be able to identify the circumstances when a strip search may be performed at the time of booking.

1. TCJS Rule §265.2 Search
   1. (A) A thorough pat or frisk search shall be conducted on each inmate upon entry into the facility and prior to booking.
   2. (B) When facility personnel reasonably believe it to be necessary, inmates should undergo a thorough strip search for weapons and contraband that may pose a threat to the security or safety of the facility. The strip search shall be conducted by jailer(s) or designated staff of the same gender in a reasonable and dignified manner and place.
2. TCJS Rules §265.11 Shower
   1. Following booking and prior to housing assignment, inmates should be showered. Inmate showers shall be supervised by a jailer or designated staff of the same gender.
3. *Florence v. Board of Chosen Freeholders*, 566 U.S. 318 (2012), is a Supreme Court Case declaring jail facilities may strip search inmates prior to admitting them into the jail in order to maintain the security of the facility. The standard for searching an inmate was established as reasonable suspicion and not probable cause.

## The student will be able to identify the circumstances when body cavity searches of inmates may be conducted.

1. A search under the fourth amendment occurs when a governmental employee or agent of the government violates an individual’s reasonable expectation of privacy.
2. Strip searches and visual body cavity searches, including anal or genital inspections, constitute reasonable searches under the fourth amendment when supported by probable cause and conducted in a reasonable manner.
   1. Probable cause is a requirement found in the fourth amendment that must usually be met before police make an arrest, conduct a search, or receive a warrant.
      1. Courts usually find probable cause when there is a reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search).
      2. Under exigent circumstances, probable cause can also justify a warrantless search or seizure. Persons arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a prompt judicial determination of probable cause.
   2. In the law of negligence, the reasonable person standard is the standard of care that a reasonably prudent person would observe under a given set of circumstances.

## The student will be able to identify the impact of Fourth Amendment court decisions on searches of inmates in their living areas.

1. The fourth amendment protects individual rights to privacy, but its protection is not available to all members of society under all circumstances
   1. Most notably, the fourth amendment is not available to pretrial detainees or convicted prisoners to prevent searches within their cells.
   2. The Supreme Court laid the foundation for this restriction of prisoners’ fourth amendment rights in *Lanza v. New York* when the Court held that a prison is not an area protected by the constitution.
2. In *Katz v. United States* and *Smith v. Maryland,* the Supreme Court established that the applicability of the fourth amendment is contingent upon whether the individual can claim that a “legitimate expectation of privacy” has been invaded by government actions.
3. In *Bell v. Wolfish*, the Court determined the reasonableness of contested searches in a categorical fashion. Prior to this case these decisions were on a case-by-case basis.
   1. The court argued, “When an institutional restriction infringes a specific constitutional guarantee… the practice must be evaluated in light of the central objective of prison administration, safeguarding institutional security.”
   2. The Court found that shakedown searches of prison cells help to maintain security and preserve internal order and discipline.
   3. Relying on the categorical determination that prison searches fulfill the government’s objectives regarding prison security, the Supreme Court in *Bell* held that the shakedown searches of pretrial detainees are reasonable.
   4. The Court in *Bell* also acknowledged the plausibility of the argument that “a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the fourth amendment provides no protection for such a person.”
4. In *Parratt v. Taylor*, the Supreme Court confronted the question of the adequacy of post-deprivation remedies for prisoners whose property was negligently destroyed by prison officials.
5. In *Hudson v. Palmer*, the United States Supreme Court held for the first time that the fourth amendment does not protect prisoners from searches of their personal property by correctional officers.
   1. The Court held that prisoners have no reasonable expectation of privacy in their prison cells that must be protected by the fourth amendment. Although several circuits have recognized that prisoners have a “limited privacy right” in their prison cells entitling them to the protection of the fourth amendment, the *Hudson* decision eliminates any possibility that prisoners could invoke the fourth amendment to protect their property from search or seizure by state employees.
   2. The Court in *Hudson* also extended its decision in *Parratt v. Taylor* to intentional deprivations of property by state employees.
      1. The *Parratt* Court held that prison officials who negligently destroy prisoners’ property do not violate prisoners’ property rights under the fourteenth amendment’s due process clause as long as the state provides post-deprivation remedies.
      2. The *Hudson* decision further establishes that prison officials do not violate prisoners’ fourteenth amendment rights even when they intentionally destroy prisoners’ property.
      3. The Supreme Court found that because the state could not anticipate random and intentional unauthorized conduct by its employees, the state could not provide remedies before the deprivation occurs.
      4. Guided by this principle, the *Hudson* Court gave judicial notice to the impracticability of traditional predeprivation remedies when random and unauthorized deprivations occur, and it did not require such remedies.
      5. The *Hudson* majority held that when states provide adequate civil remedies for deprivations that are committed by state employees, the procedural requirements of the due process clause of the fourteenth amendment are fulfilled.
      6. The Court found that nearly all correctional administrators discourage prison guards from either seizing or destroying noncontraband property because institutional goals are not served when guards deprive inmates “of any residuum of privacy or possessory rights.”

## The student will be able to identify the circumstances when visitors and employees may be subjected to pat down searches.

1. The fourth amendment protects against “unreasonable searches and seizures.”
2. The fourth amendment only protects places or things in which you have a “reasonable expectation of privacy”
3. Searches must be based upon reasonable suspicion or they may subject the officers and agency to legal redress.

<https://www.prisonlegalnews.org/news/1994/mar/15/the-rights-of-visiting-and-visitors/>

<https://www.prisonlegalnews.org/news/2020/aug/1/125-million-settle-class-action-suit-over-strip-searches-nyc-jail-visitors/>

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