# LEGAL ASPECTS OF FORCE

## **11.1.0** **Unit Goal: S**ummarize legal aspects of using force.

## **11.1.1 Learning Objective:** Define force.

Definition of force - an aggressive act committed by any person, which does not amount to an assault and is necessary to accomplish one’s objective.

Source: <http://www.co.wise.tx.us/constable/Downloads/Use%20of%20Force.pdf>

## **11.1.2 Learning Objective:** Discuss legal use of force for jailers according to Texas statutes.

A. Define custody - PC §38.01(l): "Custody" means: (a) under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States; or (b) under restraint by an agent or employee of a facility that is operated by or under contract with the United States and that confines persons arrested for, charged with, or convicted of criminal offenses.

B. Define escape - PC §38.01(2): "Escape" means 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.

C. Define deadly force - PC §9.01(3): “Deadly force” means 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.

D. Self-Defense - PC §9.31: (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other’s use or attempted use of unlawful force;

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer’s presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other’s use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer’s (or other person’s) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

E. Prevention of Escape From Custody - PC §9.52**:** 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.

F. Maintaining Security in a Penal Institution - PC §9.53**:** 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.

G. Justification as a defense – PC §9.02: It is a defense to prosecution that the conduct in question is justified under this chapter.

1. Confinement as Justifiable Force – PC §9.03: Confinement is justified when force is justified, if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.
2. Threats as Justifiable Force – PC §9.04: The threat of force is justified when the use of force is justified by this Chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor’s purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.
3. Necessity – PC §9.22: Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

K. Deadly Force in Defense of Person – PC §9.32: (a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

L. Defense of Third Person – PC §9.33: A person is justified in using force or deadly force against another to protect a third person if:

(a) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(b) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

1. Protection of Life or Health – PC §9.34: (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other’s life in an emergency.

## **11.1.3 Learning Objective:** Identify the use of force options.

A. Force options

1. Command presence - a jailer’s mere position of legal authority initiates inmates’ cooperation. Consists of routine supervision and an acceptance of authority by the inmates.

2. Verbal/non-verbal communications - jailers must be able to effectively communicate, especially under stressful situations or conditions, such as when dealing with:

* + 1. People who do not want to talk or listen
    2. Emotionally charged individuals
    3. Dangerous circumstances
    4. Being watched by others
    5. People who dislike and/or distrust jailers

3. Weaponless strategies - physical strength/skill - use of the acronym “SAFER”

1. Security - person seriously threatens bodily harm to a jailer, another person, or when the jailer’s control is compromised.
2. Attack - a jailer’s personal body danger zone is violated or an inmate displays aggressive behavior.
3. Flight - when an inmate begins walking or running away or when an inmate escapes from custody.
4. Excessive Repetition - when a jailer is forced to repeat the same words or ideas over and over; repeated refusal by an inmate to comply or when an inmate is unreceptive to alternatives after repeated appeals.
5. Revised Priorities - possibly when the problem or constraints change or other events of greater importance occur.

4. Weaponless Control - when words do not control and the use of a weapon is not appropriate, this should be applied.

a. Techniques:

1. Restraint holds
2. Impact and stunning blows
3. Pain compliance techniques to cause a person to cease resistance

b. Concepts:

1. Self-control
2. Balance - mental and physical
3. Awareness

5.Weapons strategies - less lethal devices

1. Hand-held electrical weapons (stun guns and tasers)
2. Chemical weapons (mace and pepper spray)
3. Baton or other impact weapon

6. Deadly force

1. A jailer may use deadly force to protect themselves or others when and to the degree they reasonably believe an immediate threat of death or serious bodily injury exists to themselves or others.
2. A jailer should not use deadly force if there is a risk that their actions could cause an innocent person to be injured or killed.
3. While a jailer might be justified in the discharge of a weapon, the law requires that they do so with reasonable prudence to avoid injury to others and that they exercise care commensurate with the danger involved.
4. Refer to department policy and Texas Penal Code pertaining to the use of deadly force.

B. Using the least amount of force necessary.

* + - 1. Continuum of force – always use the least amount of force necessary to control the situation. Refer to “SAFER” acronym.

2. Force may be justified due to the levels of the inmate’s resistance, but it must also be reasonable in the amount used.

C. Improper use of force or excessive force may subject jailer to civil and criminal liability.

D. Departmental policy may limit or prohibit use of certain types of force.

1. Irritants

2. Batons/Impact weapons

3. Deadly force

## **11.1.4 Learning Objective**: Identify the levels of the inmate’s behavior.

Perceptions of the inmate’s behavior:

1. Compliant - Inmates are willing to follow all rules and instructions from the officer.
2. Passive resistant - Inmates cease to obey or follow a jailer’s instructions or facility rules.
3. Active Resistant - Inmates physically resist or impede a jailer’s attempt to enforce commands or rules, but are not assaultive in their resistance.
4. Assaultive/Bodily Harm - Inmate is physically attacking a jailer, or has placed the jailer in fear of bodily harm.
5. Lethal Threat/Escape - The same as deadly force for a jailer.

## **11.1.5 Learning Objective:** Discuss the relationship between Use of Force law and force options.

A. Force Continuum/Force Options

B. Considerations in applying force continuum:

1. There are a number of force continuum scales that various departments have adopted. Refer to your department’s policy.

2. Considerations of these scales:

1. Ineffective control results when the level of force is less than the subject’s level of resistance.
2. Excessive control results when the level of force is greater than necessary.
3. The force used should be no more than a reasonable person would use under the total circumstances of situation.

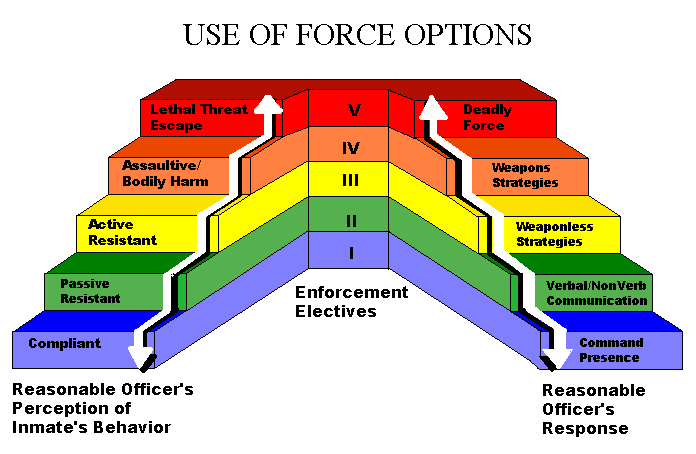
C. Work Assignments within the facility can impact decision-making and how you defend force decisions.

1. Facility design
2. Specific situations (rule violations vs criminal acts)
   1. Rule violation
   2. Criminal acts
3. Manpower
4. Access to assistance

a. Supervisors

b. Response Teams

1. Level of training
   * + - 1. Decision making
         2. De-escalation training
         3. Defensive tactics
         4. Less lethal

D. Follow departmental policy and the law.

# INMATE RIGHTS

## **11.2.0 Unit Goal:** Summarize issues involving the rights of inmates.

## **11.2.1 Learning Objective**: Define a right.

1. Definition of a right - a power, interest, or demand inherent in one person or established by law for protection and benefit of a person.
2. A right may not lawfully be suspended under normal conditions without due process of law.

C. Examples of rights that an inmate possesses:

1. Constitutional Rights - rights given by the constitution or through amendments.

2. Statutory Rights - rights given through passing of laws by legislatures.

3. Regulatory Rights - rights given by regulatory agencies (both state and federal).

4. Case Law - rights given or restored to the individual by the courts.

5. Rights gained through policy and procedure - department rules and regulations.

## **11.2.2 Learning Objective:** Identify the constitutional rights inmates possess.

1. Habeas Corpus

This term has to do with the right of an inmate to be brought before a court or judge. A writ of habeas corpus directs a person detaining another, commanding him to produce the body of the person detained. The purpose is to test the legality of the person’s detention or imprisonment; not to determine the person’s guilt or innocence. It is to determine whether the prisoner is being denied his liberty by due process. The writ is guaranteed by the U.S. Constitution, Article I, Section 9.

B. 1st Amendment

* 1. Free exercise of religion - reasonable opportunities to exercise religious beliefs must be afforded
  2. Freedom of expression - access to the media, some visitation, and some telephone use

3. Right to Assemble - petition the Government for redress of Grievance

C. 5th Amendment

1. Protection from double jeopardy

2. Protection from self-incrimination (i.e., bearing witness against oneself)

3. Protection from being deprived of life or liberty without due process

Commitment documents – the question of lawful authority to receive or hold the inmate

D. 6th Amendment

1. The right to be informed of the accusation (i.e., the reason for being held)

2. The right to counsel (i.e., an attorney)

3. The right to a public trail

4. The right to a speedy trial

5. The right to a trial by a jury of peers

E. 8th Amendment

1. The right to bail (if allowed by law) – CCP §17.29

1. Protection from cruel or unusual punishment
   * + - 1. Refusing access to medical treatment
         2. Not ensuring the physical safety of inmates, unsanitary conditions, etc.

F. 14th Amendment

Equal protection of the law

* + - * 1. No discrimination in treatment or favor on a basis other than individual merit
        2. No segregation because of race, color, or creed

## **11.2.3 Learning Objective:** Identify the statutory rights of an inmate under Texas law.

A. Some statutory rights may be denied through disciplinary process except as follows:

* + 1. Right to equal treatment - female/male inmates
    2. Right to access to mail, unless the offense is related to the facility correspondence plan TCJS 291.2(1)(E)
    3. Right to be properly fed and housed
    4. Right to adequate medical care
    5. Right to reasonably exercise religious beliefs
    6. Right to physical exercise and sunlight
    7. Right to be free from corporal punishment

B. Code of Criminal Procedure

CCP 1.04- Due Course of Law

## **11.2.4 Learning Objective:** Define privilege.

1. Definition of privilege – a particular benefit enjoyed by a person beyond the common advantage of other citizens.

Source: <https://thelawdictionary.org/privilege/>

1. A privilege may be suspended, but only in accordance with the agency’s approved disciplinary plan.
2. Examples of common privileges:
3. Library services (TCJS 287.4)
4. Telephone use (TCJS 291.1)
5. Commissary (TCJS 291.3)
6. Visitation (other than attorney, probation officer, clergyman) (TCJS, 291.4)
7. Religious services (attendance) (TCJS 291.5)
8. Education (TCJS 287.1)
9. Right to vote (unless convicted of a felony) (EC 11.002)

# GRIEVANCES

## **11.3.0 Unit Goal:** Summarize the process of handling grievances.

## **11.3.1 Learning Objective:** Explain some considerations of inmate grievances.

1. TCJS 283.3 - Purpose of grievances: As an administrative means to resolve conflicts, a viable grievance system for handling inmate complaints creates a safer, more secure jail environment for inmates and staff.
2. Grievance procedures exist to allow for intervention and the resolution of inmate complaints at the earliest opportunity. If unresolved, inmate complaints often escalate into acts of aggression and destruction.
3. The majority of inmate complaints can be resolved by an individual staff member.
4. Concerns that cannot be handled by the individual officer should be submitted, in writing, through the chain of command.

E. The grievance must state:

1. The right or privilege allegedly violated

2. The persons involved

3. The names of witnesses

1. The times, date, and pertinent details of the grievance
   1. The sheriff or sheriff’s designee shall appoint a grievance board composed of individuals (staff and/or civilian) who shall make an impartial and objective determination based upon the evidence presented.
   2. Inform inmates of the Grievance process:
2. Orientation
3. Inmate Handbook
4. Facility rules and regulations

## **11.3.2 Learning Objective**: List the four valid grievance reasons.

A. Violation of civil rights

B. Criminal act

C. Unjust denial or restriction of an inmate privilege

D. A prohibited act by facility staff - any act that is prohibited by facility rules and regulations, and that is initiated by facility staff, is a cause for a grievance

## **11.3.3 Learning Objective:** Identify the process involved in grievance procedures.

1. Grievances will be processed in an expeditious manner, especially if the possibility of personal injury or other problems (medical, maintenance) exist.
   1. An interim response shall be completed within 15 days.
   2. A final response shall be completed within 60 days.

B. No reprisal against an inmate for initiating a grievance will be tolerated.

C. Inmates not satisfied with the decision may appeal the findings.

D. Release of information is governed by departmental policy and relevant law.

# INMATE DISCIPLINE

## **11.4.0 Unit Goal:** Summarize the disciplinary process within a jail.

## **11.4.1 Learning Objective:** Explain how inmates are familiarized with the rules and regulations of the facility.

A. It is imperative that officers explain the rules and regulations to an inmate in order for the inmate to become familiar with the jail’s rules and regulations.

1. Inmate orientation during intake and processing

2. Distribution of facility rules and regulations (TCJS 283.2)

3. Facility rules and regulations posted

4. If found to be illiterate, staff shall read the rules and regulations to the inmate

5. Inmates will acknowledge receipt of facility rules and regulations with their signature or mark

B. Refer to departmental policy

## **11.4.2 Learning Objective:** Identify forms of discipline prohibited by TCJS (283.1.4).

1. Deviation from regular meal schedules, or deprivation of food
2. Corporal punishment (i.e., punishment inflicted directly on the inmate’s body)
3. Administration of any form of disciplinary action or supervision by inmates
4. Deprivation of clothing or bedding, except that inmates who destroy bedding or clothing may be deprived of such items. This shall be reviewed and documented every 24 hours
5. Use of a violent cell for disciplinary purposes
6. Deprivation of items necessary to maintain an acceptable level of personal hygiene
7. Deprivation of correspondence privileges when the offense is unrelated to a violation of the jail rules on correspondence. In no case shall correspondence privileges be suspended for officials listed at TCJS 291.2(2) (A).
8. Deprivation of recreation and exercise privileges
9. Refer to department policy.

## **11.4.3 Learning Objective:** Identify forms of discipline accepted by TCJS for both minor and major infractions. (TCJS 283.1(1) and (2))

1. Minor infractions - violations of rules and regulations that do not represent serious offenses against persons and do not pose a serious threat to institutional order and safety

1. Examples of minor infractions:

1. Refusing to clean a cell
2. Being noisy
3. Refusing to work
4. Being insolent or disrespectful

2. Sanctions shall be limited to:

* + 1. Counseling
    2. Verbal or written reprimand
    3. In podular direct supervision facilities, temporary restriction to cells for period not to exceed 24 hours
    4. Loss of privileges for a period not to exceed 15 days
    5. Disciplinary separation for a period not to exceed 15 days
    6. Restitution for damage to jail property
    7. Loss of good conduct credit

B. Major Infractions - violations of rules and regulations that constitute serious offenses against persons and property and pose a serious threat to institutional order and safety.

* 1. Examples of major infractions:
  2. Interfering with a count
  3. Attempting to escape
  4. Possessing a weapon
  5. Assault
  6. Fighting
  7. Destroying security equipment

2. Sanctions may include:

1. Loss of good conduct credit
2. Loss of privileges for a period not to exceed 30 days
3. Removal from work details or programs
4. Disciplinary separation for a period not to exceed 30 days
5. Restitution for damage to jail property

C. Refer to department policy.

## **11.4.4 Learning Objective:** Identify methods for documenting inmate disciplinary behavior.

1. Informal methods

Acts of a minor nature not requiring formal documentation may include verbal counseling.

1. Formal methods
   1. Repetitive minor acts of a disciplinary nature or incidents of serious misconduct will be documented on official reporting forms.
   2. Written reports placed in inmate file
   3. Written reports given directly to the sheriff

2. Filing formal charges

* + 1. Administrative charges (disciplinary)
    2. Criminal charges

C. Refer to departmental policy

## **11.4.5 Learning Objective:** Explain the functions of an inmate disciplinary board.

A. Inmate Disciplinary Board

1. Administrative proceeding (not part of a criminal prosecution)

1. Supreme Court has upheld that disciplinary proceedings do not violate due process of criminal proceedings
2. *Wolff v. McDonald*, 418 US 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)
   1. Composed of individuals (staff or civilian), who were not involved in the incident and are able to make an impartial, objective determination based on the evidence presented.

B. Disciplinary Board should:

1. Question, listen, and think through the testimony and evidence presented.

2. Obtain all pertinent facts.

3. Analyze the evidence.

4. Make an objective determination of the fact based upon a preponderance of the evidence.

5. Document the situation - sustains “good faith” intention against subsequent litigation.

## **11.4.6 Learning Objective:** Explain procedures for due process rights of inmates.

1. Due process requirements (TCJS 283.1(3))
   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 with capacities of 50 inmates 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;

The following information should be noted:

1. Date
2. Time
3. Signature of Jailer
4. Signature of Inmate
   1. 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. The waiver shall include the appropriate identification of charges, the allowable sanctions, and the sanctions offered by the waiver. A waiver shall not include the loss of good conduct time as a sanction;
   2. Provisions shall be made for the disclosure of the evidence against the person charged with the violation, although confidential informants may be protected;
   3. 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;
   4. 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;
   5. 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; and
   6. 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.

B. 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. (TCJS 283.1. (3)(J))

1. Inmates found guilty by a disciplinary board may appeal the decision.
2. Specific reasons for a reversal of the decision must be stated in writing.

3. Refer to department policy.

***Instructor Note:*** *The instructor will provide examples of forms used in the disciplinary process in addition to various examples of rule violations. Example forms can be found on the TCJS Website under “Forms.”*

# LIABILITY

## **11.5.0 Unit Goal: S**ummarize liability issues for jail personnel.

## **11.5.1 Learning Objective:** List circumstances constituting federal civil rights violations by jail personnel.

A. United States Code (USC), Title 18, Part I, Chapter 13, Sections 241 and 242.

1. 18 USC 241 - Conspiracy Against Rights

1. If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
2. If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured.
3. They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

2. 18 USC 242 - Deprivation of Rights Under Color of Law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both, and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

## **11.5.2 Learning Objective:** List violations/possible charges of state criminal law by jail personnel.

***Instructor Note:*** *Refer to the Penal Code for a summary of the statutes.*

A. Unlawful restraint PC §20.02

B. Assault PC §22.01

C. Sexual assault PC §22.011

D. Aggravated assault PC §22.02

E. Aggravated sexual assault PC §22.021

F. Theft PC §31.03

G. Tampering with or fabricating physical evidence PC §37.09

H. Tampering with governmental record PC §37.10

I. Permitting or facilitating escape PC §38.07

J. Implements for escape PC §38.09

K. Prohibited substances in a correctional facility PC §38.11

L. Abuse of official capacity PC §39.02

M. Official oppression PC §39.03

N. Violations of civil rights - person in custody PC §39.04

O. Failure to report death of prisoner PC §39.05

P. Misuse of official information PC §39.06

## **11.5.3 Learning Objective:** Identify circumstances, which subject jail personnel to civil liability.

A. USC Title 42, Chapter 21, Subchapter I, Section 1983 - Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

B. Tort Liability

1. Money damages for civil wrong

2. Negligent, malicious acts done intentionally by jail personnel that result in injury to an inmate:

1. Punitive striking of inmate
2. Excessive use of force

3. Negligent, malicious acts or omission of acts done intentionally by jail personnel that result in injury to an inmate:

1. Failure to provide medical treatment
2. Failure to ensure physical safety of inmate
3. Failure to provide sanitary conditions
4. False imprisonment

## **11.5.4 Learning Objective:** List circumstances, which reduce civil liability for jail personnel.

A. Act in a lawful manner

1. Federal statutes

2. State statutes

3. TCJS

4. Any other applicable statutes

B. Follow departmental policies

Immunity may exist if “reasonable, good faith belief” is justified

C. Do not act in a punitive manner

D. Documentation of events to include written and photographic evidence if applicable:

1. Any use of force
2. Inmate injuries
3. Discharge of weapons
4. Escapes / attempted escapes

## **11.5.5 Learning Objective:** List civil liabilities of supervision.

1. Jail personnel are inmates’ supervisor(s).
2. What an inmate does under supervision is a liability.
3. Vicarious liability (e.g., the liability of an employer for the acts of an employee) (Black’s Law Dictionary)
4. Failure to protect

## **11.5.6 Learning Objective:** Identify areas which may reduce civil liability of supervision.

1. Follow written and verbal instructions carefully.
2. When in doubt, seek clarification.
3. Review rules and procedures.
4. Be sure the inmate knows what is expected of them.
5. Maintain records - use forms to document incidents.
6. Report all unusual occurrences.
7. If policy/procedure is not followed, take prompt corrective action.
8. Request supervisor issue written order if the verbal order is contrary to rule or law.

**Related Case Law**

***Shaw v. Stroud,* 13 F. 3d 791 (4th Cir. 1994)**

A supervisor may be liable for acts of subordinates even when the supervisor has no direct involvement if the supervisor has failed to document and take corrective action for prior similar acts of misconduct. Elements of supervisory liability: the supervisor had actual or constructive knowledge that subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury; the supervisor’s response or lack of response showed deliberate indifference or tacit authorization of the officer’s conduct; a causal link between supervisor’s inaction and the injury that occurred.

***City of Canton v. Harris* 489 U.S. 378 (1989)**

An agency that fails to train officers for recurring tasks that law enforcement officers face may be liable for failing to train the officers, where the lack of training foreseeably leads to a constitutional violation. Failure to train established where: agency fails to train officer in a subject where there is an “obvious need” for training (e.g., firearms and deadly force); the agency is aware, or should be aware of a pattern of conduct by officers which evidences the need for training or better training to avoid constitutional violations, and the agency fails to take action on this need.

***Munger v. City of Glasgow,* 227 F.3d 1082 (9th Cir. 2000)**

It is not enough for an agency to merely have a policy that governs officer actions: the agency must train the officers on the policy to effectively avoid liability.

***Perrin v. Gentner,* 177 F.Supp.2d 1115 (D. Nevada 2001)**

An agency may be liable for the conduct of an officer when the agency fails to adequately guard against constitutional injuries through training and supervision. “A law enforcement agency’s policy may be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded.”

# INMATE CON GAMES

## **11.6.0 Unit Goal:** Identify inmate con games

## **11.6.1 Learning Objective:** Identify the characteristics of an inmate set-up.

1. Some inmates know how to manipulate situations and people. Coercion and manipulation has, in many cases, become a lifestyle.
   1. How and why it happens:
      1. Tendency to give people the benefit of the doubt and pay little attention to the idea that some people are deceptive.
      2. The system of deception they have created is called the set-up.
      3. The set-up is a game in which the inmate wants to win.
   2. There is a winner and a loser.
      1. The Winner: In a successful setup an inmate can receive:
         1. Illegal contraband
         2. Sex
         3. Status among peers
         4. Personal satisfaction from just being able to do it
      2. The Loser: In an unsuccessful setup, an inmate can:
         1. Be terminated from their employment (Inmate Worker)
         2. Face additional criminal charges
         3. In some cases, face death at the hands of other inmates
2. Through education and experience, jailers become aware of deceptive practices.

## **11.6.2 Learning Objective:** Recognize the manipulation tactics of inmate(s).

1. Manipulationis to control by skillful, unfair, or insidious means especially to one’s own advantage.
2. Manipulative Tactics Inmates Use:
   1. Flattery – Stroke one’s ego
   2. False Empathy – To identify without feeling sorry
   3. False Sympathy – To feel sorry for them
   4. Helplessness – Beware the inmate asking for help
   5. False Sensitivity – To you as a person
   6. Confidentiality – To share a “secret” or create a bond
   7. Isolate and Protect – Use of rumors, play staff against staff
   8. Touching – Implies permission to proceed further
   9. Sexual References – Always unacceptable whether by staff or inmates
   10. Coercion and Intimidation – Usually in the form of blackmail
   11. Susceptibility – Factors that affect manipulation of staff by inmates
   12. Environmental/Societal Conditioning
   13. Connection – Something in common with the inmate (age, race, religion, background)
   14. Sexual Attraction
   15. Power and Control – Gives the inmates incentive to “get” the staff
3. Victims are selected because of their personality traits.
4. A jailer’s education, years of experience, rank, sex, ethnicity, and intellect are not protectors.

## **11.6.3 Learning Objective:** Identify the types of staff.

1. Inmates place jailers into three categories: soft, medium, and hard.
   1. Soft Jailers
      1. Soft jailers are usually very trusting, overly familiar and naïve. They may have a strong desire to help the inmate and be sympathetic and understanding.
      2. They have the inability to say “NO” or take command.
      3. Soft equals gullible.
   2. Medium Jailers
      1. Medium jailers exhibit traits of both soft and hard jailers as necessary.
      2. Their actions discourage the manipulative process, not because they can’t be manipulated, but because the process would take too much time.
      3. Medium equals cautious.
   3. Hard Jailers
      1. Hard jailers go strictly by the book. Everything is black and white and there is no in-between.
      2. They grant no leeway.
      3. Hard equals suspicious.
2. Jailers should be aware that the same techniques can be used on civilian employees and volunteers in the facility.

## **11.6.4 Learning Objective:** Recognize the phases of a set-up.

1. There are three phases in the set-up:
   1. Observation and selection
   2. Hooks
   3. Compromised
2. Observation and Selection
   1. Observation Process
      1. It is a very precise, close, silent study by the inmate to determine the likelihood of a victim.
      2. The observer pays close attention to an employee who uses inmate jargon, ignores minor rule infractions, plays favorites, and is easily distracted.
      3. Responses to seemingly harmless questions assist in the construction of this profile.
      4. This takes place over months.
      5. It is slow, subtle, and calculated.
   2. Body Language
      1. The manner and method in which a person carries oneself gives off messages.
      2. The observer, watching body language, wants to know if the individual lacks confidence and is not sure in certain situations.
      3. Observes individual’s appearance of having unpressed clothing, unkept personal hygiene, and all around sloppy look that shows the lack of self-esteem and professionalism.
      4. This could add to the profile as selection for a victim becomes better defined.
   3. Listening Observation
      1. Inmates listen to everything we say and how we say it.
      2. Inmates listen and note to hobbies, interests, likes, dislikes, and personal information (i.e. home address, married, single, divorced, children, and other seemingly harmless information.).
      3. This phase has probably been assisted by numerous inmates.
   4. Verbal Observation
      1. Based on the employee profile, a “turner” will be chosen from the inmates with the same likes, dislikes, and background as the employees.
      2. Other inmates that accompany the “turner” are only there to see how the “turner” is received by the employee.
      3. Will the employee “befriend” the inmate.
   5. Action Observation
      1. The “turner,” in this step, will violate a minor rule to test what sort of stand the employee takes.
      2. He finds out if the theory about the employee’s reaction is correct.
      3. The “turner” may even make a verbal suggestion that he or she may violate the rule or regulation to see what type of response the employee is going to give.
      4. If the employee ignores this subtle suggestion and looks the other way then the turner acts out the violation.
   6. Selection of Victim

Employees are selected as victims in two ways:

* + 1. Accidental - Selection could come from the employee making an error in judgment that they would not normally make and inmates becoming aware of it.
    2. Intentional - Selection is based on the personality profile, employee traits and all of the information gathered up to this point.
  1. Test the Limits
     1. This is called “nudging.”
     2. The inmate will push, bend, and attempt to circumvent minor rules to determine how far he can go before the victim takes action, if at all.
     3. Fish testing occurs when the “turner” requests minor items of contraband that the victim is not supposed to issue.
     4. The inmate has put out the line and hook which is the request.
     5. The bait on the hook is the fact that the inmate has made the victim feel obligated due to friendly relationship which has been cultivated.
     6. The intent is to see how much of – and how easily and how fast – these items can be obtained.

1. Hooks

These hooks can be in any sequence of their appearance in the set-up process, however, they can proceed in any order, calculated to validate that individual.

* 1. The Support System
     1. Verbal support could be comments of support and understanding indirectly given to the victim through conversations with other inmates.
     2. Later, they are given directly to the victim (i.e. you’re the best CO in the joint.)
     3. The inmate builds the victim’s ego.
     4. The inmate wants to create a feeling of making himself indispensable and, if possible, making the victim’s job easier.
     5. Pledges of devotion and faith in the individual help create a strong, trusting friendship.
  2. Empathy/Sympathy
     1. In empathy, the inmate can identify and understand with the victim without feeling sorry or pity. “I have been there. I can relate to exactly how you are feeling.”
     2. Sympathy demonstrates a feeling without necessarily having shared the experience that created the feeling.
  3. Plea for Help
     1. Let’s face it, to say correctional work can be thankless is an understatement.
     2. It is rare to see the fruits of our labor and the occasional pat on the back.
     3. The inmate is trying to build you/me situation.
     4. Following the empathy and sympathy stage is the “you are the only one that can help me.”
     5. There is nothing confidential between an employee and an inmate.
  4. We/They Syndrome
     1. The inmate wants to separate the victim from the rest of the staff so the victim turns to the inmates for ego support.
     2. Inmate(s) create animosity between staff (officer against officer).
     3. Inmates support whatever position a susceptible employee takes such as race, background, religion, and prejudices.
  5. Offer of Protection
     1. An inmate is willing to “take the heat” for the victim.
     2. In the more serious offer of protection, the inmate will offer information about areas of danger to the victim.
     3. The inmate will be assuring that he would never let this happen to the victim.
     4. If the victim does not appear overly concerned about the dangers, the set-up team may stage an event to demonstrate to the victim that the inmate or inmates are there to “protect.”
     5. This staged event is not to injure the victim but for the victim to be grateful for the inmate’s intervention.
     6. The friendship between the victim and the protector now becomes even stronger.
  6. Allusion to Sex
     1. The situations and conditions must be carefully planned and implemented so as not to draw attention to the inmate.
     2. Manipulative inmates are not only males; female inmates can be and have proven to be just as devious.
     3. Comments and repeated comments.
     4. Response will determine the next step.
  7. The Touch System
     1. Inmates will create a touching situation with both male and female employees.
     2. A handshake, pat on the back, or placing of a hand on the shoulder are examples to create a more personable bond.
     3. The touching grows more and more frequent and prolonged as well as better timed to ensure that no other staff member is around.
  8. The Rumor Clinic
     1. The inmates pull the victim from the peers and the peers from the victim, thus, coming full circle.
     2. This creates a feeling of isolation in the victim and a strengthening of the bond between the inmates and the victim.

1. Compromised

Up until now, the inmates have not violated any laws and the rule infractions have been minor. Before making the next step, the inmates must review whether or not the set-up has been properly administered. The next steps are the point of no return for all involved.

* 1. The Shopping List
     1. The shopping list is just that, a list of contraband items.
     2. This list not only includes items but sexual favors.
     3. The victim knows he’s been compromised.
     4. Backing out is never an option.
  2. The Lever
     1. The right distribution of pressure has been applied and now they get their demands met.
     2. Somewhere along the line there has been some type of indiscretion on the victim’s behalf that the manipulator threatens to expose.
     3. Victims are led to believe that this is a one-time request.
     4. The victim feels some release of pressure thinking that after the demands are met, things will return to normal.
     5. This is not the case.
  3. The Sting
     1. The victim now has a choice to make – do as you are told or suffer the consequences.
     2. Employees either comply with the demands of the inmate, resign, or risk the possibility of being harmed and expose the situation.
     3. Others resign and some will risk the possibility of being harmed and the situation exposed.
     4. It is a lose situation for the victim.
     5. Even if the victim succumbs to their demands, it is not enough for the inmate(s).

## **11.6.5 Learning Objective:** Recognize the warning signs of inmate con games.

1. Inmate set-ups are a serious problem.
2. If you see an employee heading down the path, stop them and report the incident.
3. Inmate warning signs. Inmates will:
   1. Ask for special favors
   2. Offer gifts to the officer
   3. Try to develop a personal relationship
   4. Improper touching or compliments
   5. A certain inmate will be viewed or treated more favorably by a jailer

## **11.6.6 Learning Objective:** Describe fundamental ways to avoid a set-up.

1. How to avoid a set-up:
   1. Look and act professional at all times.
   2. Know policies and procedures.
   3. Be aware of con games.
   4. Be straight forward and honest.
   5. Inform and communicate with the supervisory chain:
      1. Verbally
      2. Written
2. Officers must be constantly vigilant and aware of inmate manipulation.

***Instructor Note:*** *The following link includes a video of an inmate explaining the manipulation of staff. It is recommended this video be referenced in short segments with instructor facilitation of discussion.* [*https://www.youtube.com/watch?v=sFm-HOoJZpc*](https://www.youtube.com/watch?v=sFm-HOoJZpc)