



Proceedings of the Large Jail Network Meeting: September 2015

Session topics:

**Reduction of
Arrests/Incarceration of the
Mentally Ill**

**Planning and Implementing
Effective Mental Health Services in
Jails**

High Liability Inmates

Professional Certification

Association Updates

Legal Updates

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**Proceedings of the Large Jail Network Meeting
Aurora, Colorado
September 28-29, 2015**

**U.S. Department of Justice
National Institute of Corrections**

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About the Large Jail Network

The National Institute of Corrections (NIC) established the Large Jail Network (LJN) in 1989 as a connection point for administrators of jails and jail systems housing 1,000 or more inmates. The network was launched with 67 member agencies and convened at its first meeting in 1990. Participants meet twice yearly, in the spring and fall.

The contact for information about the Large Jail Network is Mike Jackson, Correctional Program Specialist, NIC Jails Division, Washington, D.C., (800) 995-6423, ext. 69565, or mpjackson@bop.gov.

NIC provides a private, web-based site for the LJN, where members can access presentation files from this and earlier LJN meetings, as well as share other materials throughout the year. A member forum facilitates a day-to-day dialogue on issues facing large jails and strategies for responding to them. Current and prospective members can access the site at <http://community.nicic.org/forums>.

Purpose

The NIC Jails Division networks' mission is to promote and provide a vehicle for the free and open exchange of ideas and information and innovation among network members. In addition, NIC networks reinforce the assumption that knowledge can be transferred from one jurisdiction or agency to another and this knowledge can serve as a stimulus for the development of effective approaches to address similar problems or opportunities.

Our belief is that, collectively, network members are likely to have developed successful strategies for meeting challenges that arise. As a group, network members are an available resource to each other. The network provides a systematic way for information to be shared, which not only benefits the network member, but also those they serve and represent – the local government, state, community, staff, and inmate.

LJN Goals

- ◆ To explore issues facing jail systems from the perspective of network members with administrative responsibility.
- ◆ To discuss strategies and resources for dealing successfully with these issues.
- ◆ To discuss potential methods by which NIC can facilitate the development of programs or the transfer of existing knowledge or technology.
- ◆ To develop and improve communication among network members.
- ◆ To seek new and creative ways to identify and meet the needs of network members.

Proceedings of the Large Jail Network

September 28-29, 2015
National Training Academy, Aurora, CO

ABOUT THIS MEETING

The September 2015 Large Jail Network meeting took place at the National Institute of Corrections, National Corrections Academy in Aurora, Colorado. There were 58 detention agency administrators and staff in attendance, representing 55 large jails nationwide.

Guests and speakers at the meeting included:

- ◆ Lt. Andy Ferguson, Orange County Sheriff's Office, Santa Ana, CA
- ◆ David Stephens, MD, the National Commission on Correctional Health Care (NCCHC)
- ◆ Brent Gibson, MD, MPH, FACPM, Vice President of Operations, NCCHC
- ◆ Henry Reyes, Chief, Bexar County Sheriff's Office, San Antonio, TX
- ◆ Jeff Newton, Superintendent, Riverside Regional Jail Authority, Hopewell, VA
- ◆ Robert J. Kasabian, Executive Director, American Jail Association, Hagerstown, MD
- ◆ Fred G. Wilson, Director of Outreach and Law Enforcement Relations, National Sheriff's Association, Alexandria, VA
- ◆ Kristen Furdyna, Certification Manager, American Correctional Association, Hagerstown, MD
- ◆ Carrie Hill, JD, Legal Counsel, Hennepin County Sheriff's Office, Minneapolis, MN. She will be addressing the group regarding legal issues in jails.
- ◆ Sandy Cathcart – Correctional Program Specialist, NIC Jails Division. Her current focus is on CIT, mental health, women's issues, and classification. She is the former Assistant Warden from Anne Arundel, MD.

Introductions and Overview

Mike Jackson, Correctional Program Specialist

Mike welcomed the group to the meeting and went over the agenda. (Refer to Appendix A for a copy of the Agenda and Appendix B for the Participant List.) He asked members to introduce themselves and give the group a brief description of their organization and any problems they are facing. Many members shared similar problems they are dealing with in their organizations, with managing inmates with mental health issues at the top of the list. Other issues mentioned by the group include:

- Staffing – Hiring, low morale, high sick leave usage
- Use of Force – especially when dealing with the mentally ill
- Drug addiction, especially an increase in opiate use
- Budgets
- Building projects to include special needs beds – mental health, medical, community corrections
- Large renovation or building projects
- Cell phones in the hands of inmates
- Special Diets – kosher and/or halal diets
- Use of administrative segregation and solitary confinement
- Managing transgender and intersex inmates
- Transgender staff members

Introduction to the National Commission on Correctional Healthcare (NCCHC)

Brent Gibson, MD, MPH, FACPM, Vice President of Operations, NCCHC

Dr. Gibson began the presentation by asking the question “Why does accreditation matter?” Accreditation can be helpful to organizations facing court orders or law suits related to providing health care for inmates. While accreditation will not make a facility immune to a law suit, adherence to the standards can ensure compliance with consent decrees. NCCHC standards are a good starting point to ensure compliance and to defend against 8th amendment and due process violations, such as deliberate indifference, access to care, care that is ordered by a doctor, professional medical judgment, and having competent providers. Dr. Gibson pointed out that in the medical world today there is a lot of specialization so there is a need for doctors in primary care to staff jails.

Dr. Gibson went on to explain that NCCHC's recommended standards for health care delivery systems in jails are based on constitutional requirements and subsequent court decisions/interpretations. Pertinent decisions include:

- Supreme Court rule that prisoners have a right to be free of "deliberate indifference to their serious health care needs"
 - » US Supreme Court: *Estelle v. Gamble* (1976)
- "We see no underlying distinction between the right to medical care for physical ills and its psychological counterpart." This decision extended the Estelle decision to mental health care.
 - » 4th Circuit Court: *Bowring v. Godwin* (1979)

The standards require: that treatment is provided based on nationally accepted clinical guidelines (although the standards are not clinical guidelines), that health care professionals work within their scope of practice and that they are supplemental to discipline-specific directives.

In order to receive accreditation a facility must have 100% compliance with *essential* standards and 85% compliance with *applicable* standards. It is difficult to get accreditation. In 2014, 500 facilities participated in the accreditation process and there are accredited facilities in 47 states and the District of Columbia.

Dr. Gibson went on to explain NCCHC Certification. NCCHC pioneered corrections-oriented certification and administers the largest certification program in correctional health care: the Certified Correctional Health Professional (CCHP). The CCHP is the most widely held correctional health care credential in the world, with more than 3,000 individuals currently certified. NCCHC also offers specialty certifications and advance certifications for nursing, mental health and physicians.

NCCHC holds a National Conference on Correctional Healthcare and the next conference will be held in Dallas TX on October 17-21, 2015. This conference is not just for medical providers as corrections people can learn too.

NCCHC also has resources to help with policy decisions, including position statements, CorrectCare Magazine, and staff resources. They now offer technical assistance for facilities through NCCHC Resources, Inc. Go to their website at www.ncchc.org for more information or call 773-880-1460.

Dr. Gibson then took questions for the group.

Q: There isn't a standard for electronic health records can NCCHC give advice on what to look for in a vendor?

A: There are probably 10 or more vendors for this type of system. Look at systems that coordinate all aspects of medical care, e.g. lab results, x-rays, medical history.

Q: Can Ryan White Funding for AIDS testing and treatment be used for inmates?

A: It can't be used for inmates.

Q: There are new hepatitis C drugs that can be 100% effective in curing the disease; should jails pay the money for these expensive drugs since they are so effective? How do we get NCCHC on board to get funding for these drugs in jails?

A: NCCHC has been looking into this issue.

Identification of Programs of the Major Counties Sheriffs' Association Members – Designed to Reduce Arrest and/or Incarceration of the Mentally Ill

Lt. Andy Ferguson, Orange County Sheriff's Office, Santa Ana, CA

Lt. Ferguson began the presentation by providing some background on the Major County Sheriff's Association (MCSA). The requirement for membership in the MCSA is that the county population be over 500,000 people. There are currently only 80 counties that are eligible for membership in the Association.

He then began a discussion of the issue of arresting and incarcerating the mentally ill by briefly going over some statistics with regard to the mentally ill in jails.

- “The nation’s largest mental hospital is a jail”
- About 2 million people with mental illness are admitted to jails each year across the U.S.
- Costs of mental health inmate housing are 2-3 times that of a non-mental health inmate
- Mental health inmates spend longer periods in jail while working their way through the system
- Orange County, CA statistics:
 - Average of 582 new mental health cases opened in our jails each month

- Average over 1500 open mental health cases monthly (25% of inmates)
- Over 10,000 MH inmates each year take medication while in our custody
- Orange County spends \$800k per year on mental health medications

Lt. Ferguson then went over some additional statistics regarding the mentally ill.

- In Cook County, IL, 37% of arrestees self-reported some type mental illness.
- In a recent IACP (International Association of Chiefs of Police) survey, officers reported handling mental health-related calls 20%-40% of the time and those calls take significantly longer to process than other types of calls.
- Researchers estimate 7% of police contacts in jurisdictions of 100,000 or more are mental health related.
- The New York City Police Department responds to approx. 150,000 “emotionally disturbed persons” calls per year.
- In Los Angeles County:
 - 17-21% of inmates have a mental illness (3,400 inmates)
 - 95% also suffer from addiction disorders
 - The mentally ill have the highest recidivism rate at 73-75% within three years.
 - Nearly 40% of use of force incidents involved mentally ill inmates.

Incarcerating the mentally ill in jails and requiring jails to become de facto mental hospitals is expensive and does nothing to stop the revolving door. As a result the MCSA membership began looking for model programs for dealing with the mentally ill. They got a grant to visit mental health programs around the country. The project was funded by a Community Oriented Policing (COPS) grant in 2014.

Orange County, CA, Hennepin County, MN and Loudoun County, VA, provided three people each to attend an initial meeting in March 2015. Other participants included: Michael Ferrence, Jr., Executive Director and MCSA, Project Manager; Brent Gibson, MD National Commission on Correctional Health Care; David Stephens, Psy.D, Dean, School Of Professional Psychology at the University of the Rockies; Jim Martin, Independent Consultant; and Kim Pearson, RN, Deputy Agency Director - Correctional Health Services Orange County Health Care Agency.

Participants prepared for the meeting by sharing current policies and procedures and mental health programs. They prepared a survey that was sent to 78 agencies nationwide. The survey had three tracks: executive track, jail track, and patrol/field operations track.

Twenty-nine agencies returned the survey, some with partial responses. A quick look at the statistics showed:

- 29% of the surveyed agencies responded over the three tracks – The national survey response average is 10-20%
- 87% of respondents have a specialized mental health program
- 61% have had a mental health program for over ten years
- 38% developed a program in response to an event

Based on the survey results the committee did a matrix and a score sheet to put the responding agencies in rank order and decide where to go for site visits. After the totality of the process was reviewed, six agencies were identified for site visits by the project agency representatives. Scoring weight was given to:

- Were the policies and practices comprehensive?
- Were stakeholders groups and services included?
- Were the program results measurable (successful)?
- Can the practices be replicated?
- Are the practices scalable?

RUBRIC FOR ANALYZING COPS GRANT SURVEY RESPONSES
SHERIFF/ELECTED OFFICIAL

QUESTIONS	POOR RESPONSE/PRACTICE	GOOD RESPONSE/PRACTICE	GREAT RESPONSE/PRACTICE
5. What were your most important considerations when developing and implementing your program that addresses individuals with mental health needs?	<ul style="list-style-type: none"> ▪ Cost is the only one mentioned ▪ Cost and Legal issues were the only two mentioned 	<ul style="list-style-type: none"> ▪ A minimum of two considerations were mentioned ▪ Only one of issues identified was either Cost or Legal Issues 	<ul style="list-style-type: none"> ▪ A minimum of 3 were identified ▪ At least one identified was either related to Training, Community Support, or Developing Specialized Facilities
7. How do you track the impact of your program or practice when addressing individuals with mental health needs? Please describe...	<ul style="list-style-type: none"> ▪ No tracking occurs 	<ul style="list-style-type: none"> ▪ Tracking only occurs in terms of cost ▪ Tracking only occurs 1-2 areas ▪ Tracking results in discontinuing or reducing the amount of type of mental health services offered to the mentally ill 	<ul style="list-style-type: none"> ▪ Tracking addresses more than cost or legal issues ▪ Tracking occurs in 3 or more areas ▪ Evidence is suggested or exists that the tracking results in making positive changes in the program or practice
12. When talking about your agency/s program with others, what are the three most important points you mention about your program?	<ul style="list-style-type: none"> ▪ Only one point mentioned or identified 	<ul style="list-style-type: none"> ▪ Two points mentioned or identified ▪ At least one of the points is not related to the cost of providing services to the mentally ill ▪ Positive tone or attitude exists in the responses toward providing services for the mentally ill 	<ul style="list-style-type: none"> ▪ Three points mentioned or identified ▪ At least one of the points is not about cost or legal issues ▪ Positive tone or attitude exists in the responses towards providing services for the mentally ill
13. What are three things that will increase your program's success:	<ul style="list-style-type: none"> ▪ One or fewer things mentioned ▪ Items mentioned do not contribute to program success 	<ul style="list-style-type: none"> ▪ Two things mentioned ▪ Items clearly contribute to program success 	<ul style="list-style-type: none"> ▪ Three or more things mentioned ▪ At least two of the three items mentioned clearly contribute to program success
14. If your agency had sufficient resources, how would you envision the best program to effectively deal with those with mental health needs, both in your Jails and with encounters with Deputies in the field? What stakeholders need to be a part of this effort? Please describe:	<ul style="list-style-type: none"> ▪ 2 or fewer ideas mentioned ▪ No stakeholders mentioned or identified ▪ Response mentions neither jail or deputies in the field ▪ No mention of redirecting the mentally ill away from jail or the criminal justice system ▪ No mention of reducing the length of incarceration for those with mental illness 	<ul style="list-style-type: none"> ▪ 3-4 ideas mentioned ▪ At least one stakeholder mentioned or identified ▪ Response mentions either jails or deputies in the field ▪ Identifies either the need to redirect the mentally ill away from jail or the criminal justice system, or reducing the length of incarceration for the mentally ill 	<ul style="list-style-type: none"> ▪ 5 or more ideas mentioned ▪ 2 or more stakeholders identified ▪ Response mentions jail issues ▪ Response mentions issues related to deputies in the field ▪ Response identifies the need to redirect the mentally ill away from jail or the criminal justice system ▪ Response mentions the need to reduce the length of incarceration for the mentally ill

The top six agencies were Ventura County, CA, Jefferson County, CO, Hennepin County, MN, Cook County, IL, Bexar County, TX and Hillsborough County, FL. Those agencies have been notified and are getting ready for the site visits. A second site visit will be made to the top three counties. After all the visits the committee will prepare a report of the results. They discovered during research that no county had concise procedures in one manageable document. They hope to complete the project in the next 6-8 months

Robert Dunlap from Wayne County MI reported that all arrestees are arraigned prior to coming to jail and this can provide an avenue for diversion prior to incarceration. They are working on a formal program to implement this strategy. Los Angeles County just developed a “department of diversion.”

Planning and Implementing Effective Mental Health Services in Jails

David Stephens, MD, NCCHC, Curriculum Author

Dr. Stephens began his presentation by acknowledging all of the network members for the hard work they do. Jail administrators and staff are underappreciated as the public doesn't know what it takes to run a jail.

Dr. Stephens then gave an overview of the curriculum for *Planning and Implementing Effective Mental Health Services in Jails*. This training program was developed through a cooperative agreement from NIC awarded in 2013. NCCHC convened a committee of professionals experienced in mental health programs and jails. The committee met in Washington, DC to discuss content for the training modules. The focus was not just academic, but based on providing practical information to assist agencies in providing mental health services in jails.

Dr. Stephens then gave an overview of the curriculum, which was completed in early 2015. A pilot session was done in July of 2015. The training is comprised of 11 modules:

Module 1: Introducing Curriculum and Participants

Module 2: Definition of Mental Illness

Module 3: Community Approaches to Mental Illness

Module 4: Community Approaches to Jails

Module 5: Jail Approaches to Mental Illness and Mental Health

Module 6: Transition from the Community to Jail

Module 7: Key Elements of Mental Illness and Mental Health Services in Jails

Module 8: Stages of Incarceration

Module 9: Staff Training

Module 10: Treatment, Administrative and Legal Aspects of Mental Health Services in Jails

Module 11: Re-entry

Dr. Stephens then gave the group some highlights from the curriculum. The curriculum is focused on adult learning and uses the strengths, knowledge and experience of all participants. Each training group develops plans at the end of each module that will be made available to all past and future students. Each facility also develops an individual jail

plan for use in their facility. Dr. Stephens pointed out that four of the eleven modules focus on interaction with the community. They were designed to assist the jails in working with the community to improve mental health services in the jail.

Dr. Stephens explained that the curriculum distinguishes between “mental health” and “mental illness” in all of the modules. Jails were never meant to handle the mentally ill. The program addresses how jails can treat and manage mental illness in the facility. Mental illness includes everything from depression to schizophrenia while mental health is defined as the ability for a person to manage their emotions well.

The jail experience challenges, diminishes and/or deteriorates the mental health of those who are incarcerated, as well as the staff who work in the facilities. The chart below describes mental, pharmaceutical and social components of mental health and mental illness.

Description of Mental Health, Mental Illness and Co-Occurring Disorders (COD)

Components	Mental Health	Mental Illness/COD
Mental	Cognitive, Emotional, Relational, Behavioral	Cognitive, Emotional, Relational, Behavioral
“Pharmaceutical”	Vitamins or Medicines to Maintain Health	Substance Abuse
Social	Appropriate, Law and Rule-Abiding Behaviors	Criminal and Rule-Violating Behaviors

Dr. Stephens explained that the jail experience is adversarial in nature. Jail is considered to be a punishment and due to the criminality of the inmates it is a hostile environment that provides little or no room for trust. These issues are exacerbated by the fact that nearly every arrestee that comes into the jail has some co-occurring disorders, e.g. substance addiction or abuse, and have problems following rules.

How do jails challenge, diminish or deteriorate mental health? Dr. Stephens talked about research done at Stanford University on the prison experience. *The Stanford Prison*

Experiment, conducted in 1971, was designed to study the effects of prison life on both guards and prisoners. Twenty-four students, who were deemed to be psychologically stable and healthy, were divided into two groups - inmates and officers. The study was designed to be conducted for two weeks in a jail setting at the university. However the study was discontinued after only six days. The students who acted as inmates started to exhibit signs of psychological stress and the students who acted as guards became aggressive and abusive. (For more information on this experiment refer to <http://www.prisonexp.org/>)

Dr. Stephens then discussed the issue of suicide in jails. Jail inmates have the up to 10 times the rate for suicide when compared with individuals in the community. In the community the rate is 10-12 suicides per 100,000 people. In prison the rate is 14-16 per 100,000. While in jails the suicide rate jumps dramatically to 35 - 57 per 100,000. Inmates when trying to cope with the stress of incarceration often seek prescription medications inappropriately or use alcohol to manage stress.

Additionally, as Dr. Stephens explained, correctional officers (COs) have a higher rate of post-traumatic stress disorder (PTSD) than soldiers coming back from Iraq. This rate is exacerbated by the fact that a large percentage of new hires are veterans and can come to the job with vulnerabilities associated with their service. COs also experience a high suicide rate. Studies have found that the rates of divorce, substance abuse, diabetes, and hypertension are higher among COs. Another small factor is the lack of appreciation for the job.

Dr. Stephens asked the group, what can jail administrators do about these problems? Some solutions or mitigating factors can include: providing intervention and treatment for the mentally ill; actively confronting criminality through behavioral and cognitive therapies; and not excusing bad behavior, except for those who don't know what is going on. Inmates must be held accountable for their behavior. Segregation is another commonly used "tool" that isn't helping those with the highest risk in the jail - 23 hour lock down does not work. We need new interventions.

NIC will pilot two classes of this program next spring. This training will be done in a class room. Participants will work in teams from their agency. Each team should include the sheriff, jail administrator, health service administrator, mental health practitioners, and the mental health director. The goal is to train staff to implement mental health programs in their jail. The most valuable part of the training is that the presenters gather information from the participants and share that information with other groups that have attended or will attend the training. Dr. Stephens told the group that they are looking for technical assistance providers to become trainers.

High Liability Inmates

Henry Reyes, Deputy Chief, Bexar County Sheriff's Office

Deputy Chief Reyes began the presentation by giving the group some background on his experience and training. He defined high liability inmates as “groups of offenders that, because of special risk factors, separation requirements, medical/mental health needs, or security concerns, pose a higher risk of liability for the department and staff.” These groups include:

- Gang Members
- Youthful/Juvenile Offenders
- LGBTI (lesbian, gay, bi-sexual, transgender, intersexual)
- Protective Custody
- Escape Risks
- Suicide Risks
- High Profile
- Co-defendants
- Administrative Segregation
- Communicable or Contagious Diseases
- Ambulatory Issues
- Blind/Deaf/Mute
- Pregnant

Chief Deputy Reyes pointed out the jails must have a custody housing plan or process in place before these high risk inmates come into the jail. If a jail has nowhere to house these inmates they should think about contracting with nearby agencies to house high risk inmates. It is essential that jails separate inmates who can be victimized from the victimizers. The LGBTI inmate is subject to more victimization, but can choose to be in general population.

Chief Deputy Reyes explained that each jail must identify the risks inherent with each group and assess officer liability, security risks (escapes riots, strong-arming), staff and offender safety, increased cost to house and manage high risk offenders, compliance with standards, and the loss of public trust when there is a serious incident in the jail.

Bexar County has a complicated classification system that has caused some complaints from funders that they aren't making 100% use of available housing beds. Chief Deputy Reyes gave examples of some problems in jails that indicated poor supervision, lack of mental health follow-up, and failure to protect. He pointed out that even if your agency doesn't have to pay a settlement, it still costs money to process lawsuits.

Chief Deputy Reyes went on to give the group some ideas on how to best manage these inmates:

- Develop a classification, booking, and arrest process that collects and shares information from the beginning. It is essential to share information - what you don't know can hurt you.
- Develop a fluid housing plan that allows inmates to be housed in the least restrictive housing available while at the same time separating inmates by categories. When mixing high risk inmates facilities can use a two tier system that allows half of the inmates out at a time, or a quad tier, that allows small groups of inmates out at one time. This system can also be used to encourage good behavior.

Bexar County uses a caseload management approach to classifying and housing inmates. One goal of this approach is to increase inmate contact with classification staff, as classification staff is required to have face-to-face contact with every inmate. It gives classification the ability to ask about what is going on in the lives of the inmates in their caseload. Classification officers also receive training specific to their caseloads, i.e. crisis intervention, gang identification, and interpersonal communication. While undergoing LGBTI training officers met with advocacy groups to help them get a better understanding of the issues on both sides. Chief Deputy Reyes told the group that it takes special people to work with these special needs groups. Not everyone can work with the mentally ill or LGBTI inmates.

Another plus to using caseload management is that it allows the agency to develop subject matter experts in the jail in areas such as gangs and the mentally ill. This approach ensures that information follows the inmate throughout the system. Officers also develop ownership in the areas they are responsible for.

The 40 classification officers are required to meet face-to-face with inmates assigned to their caseload and to document all contact. All inmates are reviewed on a schedule based on type of inmates. The average caseload for a classification officer is 250 inmates.

Other ways Bexar County maintains security include: officers go into every cell every day to check to make sure it hasn't been tampered with; they do random shakedowns to check for and prevent vandalism and contraband; they work to be proactive. In an effort to

achieve equal treatment for all inmates; high security inmates have programs in their housing units. Bexar County also has “program specific” units. For example they have a parenting unit that allows inmates to have contact visits with their children every week or so. They also have a veteran’s unit and a senior unit for those 55 and over. In another effort to maintain security they have color coded uniforms for inmates based on classification status. All officers are all CIT certified.

Finally, Chief Deputy Reyes briefly touched on diversion programs. In the jail they book 55,000-60,000 each year and divert an equal number of arrestees to programming in the community.

Open Forum: Hot Topics

Jeff Newton, Superintendent, Riverside Regional Jail, VA

Sup. Newton asked that during this session the person who brought up the topic speak to the issue to the group prior to discussion.

1. **Transgender Correctional Officers:** Rodney Ballard from Lexington KY told the group that they have their first transgender correctional officer in the academy. The officer hasn’t completed reassignment. The officer also has health care issues. When asked to indicate gender on a form the officer put a T (transsexual) instead of M (male) or F (female). He asked for advice from the group.
 - o Willis Beatty, Charleston County SC, informed the group that he had an officer that interviewed for the position as a female and had reassignment surgery six weeks after hire. They didn’t have any problems.
 - o Marilyn Chandler Ford, Volusia County FL, had an officer “Jeremy” who transitioned and became “Jessica”. Transsexuals don’t need to have reassignment surgery; they just have to live as the chosen gender. Jessica changed her driver’s license to female. As the transition was in process for six months they assigned her to a position that didn’t require inmate contact. She then chose to go to female housing unit. Other officers cut her a little slack and allowed her to not conduct pat searches for 30 days. When she did start doing searches two female inmates filed complaints. As a result, Jessica hung back and if an inmate said she was uncomfortable or made a complaint she would turn the search over to another officer.
 - o Another resource available is the standards developed by the World Professional Association for Transgender Health (WPATH). The standards and other information is available on the WPATH website at <http://www.wpath.org/>

- 2. Cell Assignments:** Mary Lou McDonough, Prince Georges County MD, asked if anyone in the group has a “cell compatibility tool” to assign housing. They want to make sure they aren’t housing a predator with a potential victim. This is not just sexual predators, but they would like to keep new criminals (young, first offenses, etc.) housed separately from hardened criminals with multiple prison stays.

 - In Massachusetts an inmate can be classified as a victim or a predator. They can also code for enemies, rival gang members and co-defendants. These situations are either self-reported by the inmate or the information already exists in the jail management system.

- 3. PREA Compliance:** Jeff Newton did an informal poll of the members and almost all the facilities, except three, were either compliant with the PREA standards or working on compliance with the PREA standards.

 - There is a new governor in Texas that has said that jails in Texas will be PREA compliant. This is a turnaround as the old governor said to ignore PREA.
 - Idaho is working on PREA compliance but the governor said they didn’t want to spend any money on formal certification.

- 4. Video, Fee Based, Attorney Visits:** Mary Lou McDonough asked if anyone has video attorney visits, using private vendors, and earning money by charging for the visits.

 - One facility is using SECURUS for video visitation and inmate phones. The company charges \$30 for each visit, with 4% (\$1.20) going to the company.
 - In Maricopa they don’t charge attorneys for visitation, either video or in person.
 - Sheriff Koutoujian, Middlesex County MA, made a push for this service and they haven’t had one attorney use the new system.

- 5. Reducing Administrative Segregation and Solitary Confinement Placements:** William Hayes, King County WA, asked if anyone in the group has programming that addresses reduction in the number of inmates housed in administrative segregation or solitary confinement.

 - Tony Wilkes, Davidson County TN, informed the group that ACA has had a working group for two years to develop standards to deal with restrictive housing. The standards will be finalized before the winter conference in New Orleans and will be enacted by January, 2016. The ACA working group went over applicable standards and modified them to address this issue. Under the standards protective custody housing is stand alone, and should not be considered to be under the umbrella of segregated housing. They have a

good team working on the issue with representatives from ACLU, mental health, etc. The new standards will be really strict.

- Sheriff Koutoujian cautioned that agencies need to be careful about perceptions regarding what segregation entails. It exists for the protection of staff and other inmates. Agencies don't need to focus on segregation as 23-hours per day in a cell punishment. Agencies need to watch for sympathy in the public. Administrative segregation and solitary confinement could be the next PREA.
- Jeff Newton pointed out that there is a difference between jails and prisons, in that jails are not putting people in segregation for years. Jails do short term housing
- Carrie Hill informed the group if legislation passes that essentially gets rid of "isolation" or "solitary confinement" and use administrative segregation, jails still have a "duty to protect" which can require the segregation of certain inmates. This fight needs to go back to the Supreme Court decision to protect. We need to look carefully at this legislation; it is right around the corner. Jails need to have a collective voice on this issue. She also cautioned the group to never refer to segregated housing as "the hole".

6. ICE Detainers - New 1-247N Request of Voluntary Notification and I-247D Detainer. Dane Collins, Muscogee County GA, asked the group if anyone has changed their policies on ICE detainers.

- Virginia doesn't honor the detainers.
- In several facilities ICE agents work in the intake area and are allowed into the facility to do their own investigations.
- Sheriff Glanz, Tulsa County OK, pointed out that 287G is an active program honoring ICE detainers. Agencies can even put detainers on inmates themselves.
- Chris Roberts, Collier County FL, informed the group that the number of detainers has dropped by 2/3.

7. Use of Force Reporting for Low Level, Non-Injury Incidents: Eric Para, Los Angeles County CA, told the group that they are now requiring deputies to document any use of force, no matter how minor. They need a new reporting process that isn't so arduous. Now reporting is low level use of force incidents is the same process as it is for the use of significant force.

- Jeff Newton suggested that the county redefine "use of force". Los Angeles is not able to do that.
- Kimberly Moule, San Joaquin County CA, told the group that they use a check off sheet with the incident number; what type of force was used, e.g. chemical

agents; any injuries that required transportation to the hospital; and any video that was taken of the incident. The check off goes to a lieutenant for administrative review. If necessary internal affairs can become involved.

- Mark Purevich, Lake County IN, told the group that they have a use of force template where incidents are separated by the type of force used. There is a use of force committee that reviews these reports every week.

8. Use of Tasers by Staff in Direct Supervision Housing Units: William Hayes asked if other facilities allow officers to carry Tasers in the housing units during their shift.

- Jeff Newton asked the group, by a show of hands, who allows officers to carry Tasers on duty all the time or some of the time. A lot of facilities allow officers to carry Tasers all of the time.
- Geoff Stobart, Franklin County OH, reported that officers in his facility don't carry Tasers in direct supervision housing units.
- Timothy Trent, Blue Ridge Regional Jail VA, told the group that in Virginia they don't use Tasers following an incident in Northern Virginia where an inmate got tased four times while in a restraint chair and died.
- Who does your training? Is the training state mandated?
- Geoff Stobart explained that in Ohio the Department of Justice is not requiring any more training than the training provided by the vendor Taser International.

9. The Affordable Care Act (ACA)

- Elias Diggins, Denver County CO, reported that they have used the ACA since it was enacted and they have over \$2.7 million in savings attributable to the ACA. They partnered with the Department of Human Services to fully utilize the ACA. Colorado is an expansion state.
- Mary Lou McDonough reported that Prince George's County expanded the use of Medicaid and the 24-hour hospitalization rule which ended up saving them a lot of money for out of facility medical costs. They work with ACA navigators to sign up everyone released from custody.
- Peter Koutoujian, Middlesex County MA, is working with Massachusetts Department of Corrections and the Shattuck Hospital Correctional Unit to utilize the ACA. They also discovered that some inmates had private health insurance, and they told the hospital to bill the insurance company instead of the jail. They are now working with Medicaid to provide Naltrexone to inmates while they are still in custody. By treating them for addiction they are less likely to recidivate.

- Rodney Ballard, Lexington-Fayette Urban County Government KY, reported that Lexington built an interface with Medicaid which resulted in a savings of \$1million.
 - Mary Lou McDonough told the group that in Prince George’s County they contract for medications and get a listing of those inmates who got medication using Medicaid so they can dispense the appropriate medication to those inmates.
 - Mark Bolton, Louisville KY, told the group that Kentucky is an expansion state. They have fully utilized the suspension of Medicaid rather than the termination of services. They start the ACA application process at intake and have saved \$4 million in medical costs so far.
10. **Body Cameras/Inmate Tablets:** Daniel Junior, Miami Dade FL, broached the issue of body cameras and asked the network members how many agencies use body cameras.
- Mark Bolton reported that they have been using cameras for four years following some hurdles with the union. They currently have 50 cameras in use and they are going to 125 cameras in the next 90 days. There have been four or five false allegations of sexual misconduct that have been found to be false because of footage from the cameras. He asked the group how other agencies handle requests for the footage.
 - Mark Purevich, Lake County IN, reported that they have been testing the cameras using the Taser “in-vest” model. In Lake County they have also started making tablets available for inmate use in their facility. They pay nothing for them and are using Telmate. They charge the inmate for the use, but no fees are charged to the lawyers to use them. Inmates have an internal inmate account that that tracks their usage and can be used by the intelligence unit to collect information. The tablets are free and they charge \$.05 per minute for usage. Paul Halle, Pinellas County FL, asked if they noticed a reduction in commissary revenue. The commissions are high with commissary products so they didn’t notice a drop in revenue.
 - Mark Purevich also noted that the system can control what the inmates have access to, that services are available in Spanish, and they can block out inappropriate content. The tablets can also be used for discipline, if one gets broken, they all get taken away. Someone asked if there was any down side to using the tablets? He told the group that when they started using the tablets a year ago they had some problems with visitation. They also had some issues getting buy in from officers who thought the inmates could use the tablets as weapons. However, he thinks acts of violence have gone down since they started using the tablets.

- Mark Adger, Fulton County GA, reported that they have been using a SECURUS tablet system, without internet access, that allows inmates to make requests and phone calls. Staff can listen in on phone calls. They went live with 70 tablets on the first day. A relative or friend on the outside must order the tablet and pay for it (it is a lease) so it hasn't changed commissary revenue. They have found that the inmates open up more during phone calls now that they use the tablets. This can be good for collecting intelligence. When the inmate is released the tablet goes back to SECURUS. Chief Adger also reported that they have had good luck with the 125 body cameras that are in use in the facility. The cameras were paid for by revenue generated by the inmates. One difficulty is getting staff to wear them and turn them on. However, it has been made clear that administration better not get a use of force report without video documentation.
- Rodney Ballard, Lexington, KY, mentioned that phone companies are now diversifying and selling everything but phone services. There will be a change in FCC rules in October or November. A limited percentage of commissions on phone calls will be allowed to recover the cost of recording phone calls; however, it is not clear how this will work. For a fact sheet on this change refer to <https://www.fcc.gov/document/fact-sheet-ensuring-just-reasonable-fair-rates-inmate-calling> and for a copy of the blog entry, *Another Step Toward Fairness in Inmate Calling Services* by Mignon Clyburn, FCC Commissioner (9/30/15) refer to <https://www.fcc.gov/blog/another-step-toward-fairness-inmate-calling-services>. Both of these documents provide further information on the changes.
- Bob Kasabian, Executive Director of the American Jail Association, told the group that the FCC will set a rate that can be charged for phone calls and any surplus will go to the jail. Inmate advocates are worried that the inmates won't have the same access they do now. Additionally, the cost of phones will be going to the taxpayers.

11. In-House Leadership/Supervisory Training: Henry Reyes, Bexar County TX, told the group the in Bexar County every Lieutenant and Captain receives leadership training. They have the STAR program for use by the “up and comers”. They run the program twice a year and 30 people per year participate.

- Dennis Wilson, Limestone County TX, told the group that all command staff complete Correctional Leadership Development with NIC and other leadership training.
- Michael Gottner, Travis County TX, reported that they use the “Shield Program” for first level supervisors. There is also an on-line 40-hour

leadership course for everyone in the agency. They use the West Point Leadership Program for lieutenants and above.

12. **Housing Transgender Inmates:** Wes Priddy, Travis County TX, brought up the issue of a male inmate living as a female. The inmate was first housed in male protective custody and then moved to female housing, then back to male protective custody. The inmate is now okay with that housing assignment. Jeff Newton responded that in his facility they form a team of medical staff, classification and the PREA coordinator and evaluate each person individually and get the inmate to agree with the housing assignment. They thoroughly document the rationale for the decision. They have housed a female with male genitals in female protective custody. His team approach works well and they haven't had any problems with sexual activity. Each decision is individual.
- A member asked if he was allowing the inmate to choose clothing or go by a different name. Sup. Newton explained that they use last name e.g. inmate Smith, and issue a female uniform for housing in female unit.
 - Peter Koutoujian, Middlesex County MA, has a male inmate that was transitioning to a woman and identifying as a woman. They went to the PREA Resource Center and got guidance, housed her in the medical unit then in female general population. Staff worked professionally with this individual.
 - Some of the group were worried about a male living as a female and housed in female housing impregnating another female inmate. Dr. Stephens told the group that a male who is on female hormone therapy can't impregnate anyone. Agencies should make housing decisions based on a medical examination and get the medical expertise they need. He also pointed out that being transgender is considered to be a serious medical condition and agencies must continue hormone replacement therapy if they are on hormones. There is a duty to treat.
 - There was some discussion of searches involving transgender inmates. Can an agency make a female officer search a female with a penis? There is also the issue of inmates who are intersexual who can have both sets of functioning sex organs.
 - Carrie Hill pointed out that jails have substantial discretion regarding housing and can decide where someone is housed. Staff can ask the inmate their housing preference but the agency doesn't have to comply with their request. Jails must look at their "duty to protect" when making housing assignments. It is critical that housing assignments in these cases are not made for punishment and that the inmates have access to programs and

activities. There are some agencies that house all transgender inmates together and they are being sued.

13. **Risk Assessment Tools for Special Response Team (SRT) Activations, Especially with the Mentally Ill** - Scott Johnson, Ada County ID, asked if anyone in the group has a risk assessment tool to be used for SRT or special response on mentally ill inmates.
 - Mike Gottner, Travis County TX, has a form that must be filled out before taking action. It documents what staff have done to mitigate the situation prior to the SRT activation.

14. **Prosecuting Inmates who Expose Themselves to Staff (Indecent Exposure)** - Elias Diggins, Denver County CO, asked the group if anyone is able to criminally charge and prosecute inmates who expose themselves to staff. Also does the court make them register as a sex offender?
 - Kimberly Moule, San Joaquin County CA, reported that they only prosecute if the inmate is outside their cell during the exposure.
 - Mark Adger, Fulton County GA, said that they work with the DA to make sure the documentation is adequate to press charges. They are taking a hard core stand, regardless of mental status of the inmate or if they are in their own cell.
 - Keith Neely, Broward County FL, told the group that the DA won't file charges on the mentally ill. Other inmates face administrative charges and the officer can file criminal charges.
 - In Miami-Dade they criminally prosecute every inmate who exposes him/herself. It is not up to the officer. They treat it like a Title 7 issue, as the indecent exposure is creating a hostile work environment.
 - Elias Diggins told the group that the DA won't prosecute so there is no chance of conviction, so they deal with it administratively.

15. **Officer Behavior with Regard to Sexual Harassment** - Karen Daniels, Pierce County WA. Asked the group if there is any level of tolerance for officers who engage in behavior that could be considered to be sexual harassment.
 - Henry Reyes reported that every allegation of sexual harassment in Bexar County goes to internal affairs (IA). IA requires a mandatory polygraph of both the accuser and the accused. Ohio does the same thing.
 - Pinellas County FL had five PREA related allegations against staff in one week. To comply with PREA the county requires staff to take a 16 hour course on PREA. When a complaint is filed the lieutenant does the initial

investigation and, if the allegations are justified, then the complaint goes to IA.

16. **Employees Testing Positive for Medical Marijuana** - Michael Frost, Essex County MA, asked if any agencies have had to deal with this issue.
- Elias Diggins brought up a case where a Comcast employee used medical marijuana and was terminated because it is against federal law. If using the medical marijuana does anything to impair judgement the agency can prohibit its use.
 - This brought up the issue of drug use in hiring standards. King County reduced their hiring standard for not using marijuana from three years to one year and Seattle Police Department lowered it even more.
 - Mike Shults, Multnomah County OR, told the group that they now take marijuana brought into the facility during booking and put it into the inmate's property.
 - A majority of the agencies present randomly test employees for marijuana and other drugs but a fairly large group doesn't do testing for marijuana use.
 - In New York an employee admitted he had used medical marijuana and was terminated. The union got him his job back.
17. **Inmate Education:** Karen Daniels inquired if any other organizations were interested in working on improvements in education programs for inmates. Recent research projects have compared the cost of education and the cost of incarceration. The research showed that inmates who received education while incarcerated had 44% lower odds of recidivism and the chances of them getting a job following their release was 13% greater. Agencies can use computer based education and testing to assist inmates in getting their GEDs. For every \$1.00 spent on education \$3.00 is saved on incarceration. The Alliance for Excellent Education predicted educating inmates could save the nation \$19+ billion. She wondered if any LJN members would be interested in using technology to get back into education in jails. She is part of an informal group that has been working on this for the last 3-4 years. They are looking at hardware that can be put in a facility loaded with curriculum and can be run as unmanaged classes. They have a program that is open entry and open exit, and inmates work on their own speed. Facilities don't pay tuition but it costs \$85 to take the test. Following release inmate can complete the course in the community. This program is not internet based and the servers are housed in the facility.
- Karen will email group members and send back information. Agencies can use commissary money to fund these programs. Pell grants are also available for

inmates. There is lots of support right now to improve the inmate population through education. Is anyone interested?

ACA Certified Corrections Professional (CCP) Program – Cost vs. Value for the Agency

Kristen Furdyna, Certification Manager, American Correctional Association

ACA provides programs for professional certifications in adult corrections, juvenile corrections, health care and security threat groups. ACA certifications are geared to employees at various levels in organizations; officers, supervisors, managers and executives. Applicants must have been employed in one of these categories for a minimum of one year prior to certification. The certification training reinforces prior training.

Why is there an “on the job requirement?” Ms. Furdyna explained that there are several reasons for this requirement, including:

- Earning a CCP designation is a point of pride.
- It is an important credential in the field.
- On the job experience helps provide validity and reinforces the practical application of prior training and education.
- Recognizes exemplary professionals already working in the field.

Ms. Furdyna went on to inform the group that the applications are now in paper form, but they will be implementing an on-line form by December. All applications require the supervisor’s signature. ACA members get a discount. There are also other funding options. Additionally agencies can get a discounted rate for a group of employees.

Ms. Furdyna then went on to discuss the testing process. Testing can be done at an ACA conference or students can test at their own facility if they have a proctor for the exam. Anyone with a CCP can become a proctor.

Students can buy optional study materials and the exams are based on the study materials. It is like a college level course and takes some time. Having study skills is also important in the process. She told the group to consult ACA’s courtesy Study Guide for study tips and skills specifically related to Certification examinations. ACA also has Webinars to help guide students through the certification process.

Ms. Furdyna explained that the exams are based on seven NIC core competencies. Refer to the ACA website at www.aca.org for more information. Recertification is required every three years and a full handbook is available on the website. The process is very individualized.

Ms. Furdyna informed the group that Bexar County has over 80 CCPs and they changed their civil service rules to require a CCP for promotion. The county pays for the exam and study materials and the study materials are shared in the department. They also do study groups.

Davidson County also reimburses employees for the fees upon successful completion of the program and certification. Denver gives officers a day off for getting certification from ACA or AJA. Other agencies give officers different incentives.

Ms. Furdyna told the group that ACA is unveiling a new CCP Officer exam with new topics, including: Offender Management, Control Offender Movement, Wellness, Law, General Skill & Equipment Control, Ethics, PREA, Leadership, and Health, Mental Health, and Safety & Communications.

There is also a new Behavioral Health Care Certification that is meant for line level staff who work with mentally ill offenders.

At this point they do not offer college credit for this process. They are also moving away from books to study guides.

The Case for Certification - American Jail Association

Robert Kasabian, Executive Director, American Jail Association, Hagerstown, MD

Mr. Kasabian informed the group that AJA offers three certifications: Certified Jail Officer, Certified Jail Manager, and Certified Correctional Trainer. AJA certifications are good for four years. Mr. Kasabian pointed out that certification signifies and documents the mastery of a strong level of knowledge in a specialized field. It plays a significant role in the elevation of professionalism and provides an opportunity for professional growth by encouraging education which, in turn, fosters effective management practices.

There are five steps to certification:

- **Step 1**– Submit a Certified Candidate Application Form, required documentation and appropriate fees to the American Jail Association by the application deadline of the desired testing period.

- **Step 2**– Upon receipt of the completed Application Form, AJA Headquarters will verify the information and then determine your eligibility to sit for the examination. If eligible, a packet of testing information will be sent to the applicant’s home address. Once received, the applicant can complete the Examination Payment Submission Form, Application for the Certification Examination, enclose the appropriate fees, and submit the paperwork to AJA Headquarters by the exam application deadline of the desired testing period.
- **Step 3**– AJA Headquarters will submit the appropriate forms to the Professional Testing Corporation (PTC). PTC will e-mail an Eligibility Notice approximately six weeks prior to the start of the testing period which contains information on how to schedule a testing appointment. If the applicant does not receive this notice at least three weeks before the testing period, they should call PTC at 212-356-0660.
- **Step 4**– The applicant calls the phone number listed on the Eligibility Notice to set up the official testing appointment.
- **Step 5**– The applicant then takes the exam. By 2016 candidates will be able to apply and test on-line.

Mr. Kasabian then covered the reasons for becoming certified, the costs for the exams and application and testing dates in 2016. He pointed out that applicants can take the course on line, but there are costs associated with the on-line course.

Mr. Kasabian then called on a few people in the audience to discuss certification.

- Robert Sowell, Clayton County GA, talked about the integrity of the certification process. Applicants go to a testing center close to them for CJM test. They are given three hours to complete the test. It took him 1.5 hours. When taking the test applicants can come back to questions. Following successful completion of the test the new CJM is certified for four years and don’t have to retake the test. He pointed out that a large number of network members are CJMs.
- Elias Diggins pointed out the advantages of certification for the agency. There is often a low level of respect people working in jails, and they are lumped in with prisons. Professional certification adds to the professionalism of the agency. It is to the advantage of jail professionals to promote certification on a national scale. Denver pays for the test and gives employees a day off when they are certified. In the future he will require certification for promotions.
- Willis Beatty, Charleston County SC, touted the benefits to staff by being certified. Officers get points for certifications. Officers must be a CJM for promotion to major or captain. After certification the officer gets an award, a plaque and other benefits.

- Kimberly Moule from San Joaquin County CA served on the commission and five commission members are CJMs. The testing process is broken into several components to meet specific criteria. Knowing that applicants met this criteria assisted with promotional opportunities. She also negotiated with vendors to pay to sponsor two CJMs.
- Ronaldo Myers, Columbia SC, told the group that getting a CCT is the most difficult certification. There is an arduous application process and the applicant must submit a video of themselves doing training. One of the advantages of the CCT is that if you do training for AJA the work pays more if you are a CCT.

National Sheriff's Association Certifications

Fred Wilson, Director of Outreach and Law Enforcement Relations

Mr. Wilson explained that NSA has offered two education based programs for officers and supervisors. They now have nine certifications in jail operations – Certified Jail Officer, Certified Jail Supervisor, and Certified Jail Executive and court security – Basic Court Security, Advanced Court Security, Master of Court Security, Court Security Manager and Court Security Executive. They also sponsor the Institute for Credible Leadership and a Homeland Security Certification. NSA's certification process looks at the entire agency, not just the jail. The courses offered by NSA are tried, true and tested. However, some need to be updated to include PREA.

Association Updates

ACA, AJA, NSA, NCCHC

AJA Update: This year's conference was held in Charlotte, SC. It was better attended than past conferences and they sold out the show floor three times. Next year's conference will be held in Austin, TX, May 22-25, 2016.

The National Jail Leadership Command Academy is held several times per year at Sam Houston University. The first two classes for 2016 are already filled. If you would like more information on this program go to <http://nationaljailacademy.org/>.

The Jail Executive Development Program will be launching soon.

NSA Update: Jonathon Thompson is the new Executive Director of NSA. They are working on a strong law enforcement advocacy program, advocating “jails are not prisons”, working on the FCC rule changes, and watching legislation effecting jails and law enforcement. There is also new legislation in the works calling for increased penalties for killing law enforcement officers or fire fighters.

They need proposals for seminars for their winter conference within the next two weeks. The winter conference will be held in Washington, DC on February 6-9, 2016. The summer conference will be in Minneapolis June 24-29, 2016.

NSA has started new victims program in conjunction with The Arnold Foundation. The program will deal with reentry issues and victims. NSA is regularly meeting with the DOJ and the white house to make sure they understand where we stand on law enforcement.

NSA is looking at hard research documenting that fatigue is a problem in the field. NSA does a regional leadership training program and a leadership academy for sergeants and lieutenants. They are talking with Virginia, California and New York about holding academy classes in those states.

NSA is starting to reach a larger group of law enforcement and corrections professionals. Earlier this year NSA sponsored a legal update series, via a pay-per-view webinar. They have done three of these web based programs so far and have had a great response.

As was discussed earlier, the FCC is looking at capping the per-minute rate for inmate phone services. NSA has taken the position that agencies need a transition of at least 2 years before the rules are enacted. He encouraged network members to go to FCC website for comments and whether commissions should be paid and how much.

There are several of new pieces of legislation coming up in congress:

HR 2646 – *Helping families in Mental Health Crisis Act of 2015*: This bill calls for an appointment of a deputy to health services to have oversight on jails. Refer to <https://www.popvox.com/bills/us/114/hr3399> for more information. This bill was formerly HR 3717.

HR 3399 – *The Solitary Confinement Study and Reform Act of 2015*: The purpose of the bill is to develop and implement national standards for the use of solitary confinement in correctional facilities, and for other purposes. Last year the bill never got out of committee but now has bipartisan support. Refer to <https://www.popvox.com/bills/us/114/hr3399> for more information.

ACA Update: The last ACA conference was in Indianapolis and they had great attendance. The winter conference will be in New Orleans January 22-27, 2016. If anyone wants to present at the conference please submit your materials within the next two weeks.

The Correctional Accreditation Managers Association (CAMA) conference will be held June 3-7, 2016 in Atlanta, GA. For more information visit their website at www.mycama.org

ACA is eliminating correspondence courses; however, on-line courses will be available. They will also be adding a classroom based use of force training.

ACA Connect is the new on line newsletter.

NCCHC Update – Upcoming national conferences: Spring Conference on Correctional Health Care April 9-12, 2016 at the Gaylord Opryland Resort & Convention Center, Nashville, TN; the Correctional Health Care Leadership Institute July 15-16, 2016 at The Westin Copley Place, Boston MA; and the Correctional Mental Health Care Conference July 17-18, 2106 at The Westin Copley Place, Boston MA.

NCCHC has the first ever physician credential. They are making lots of revisions to the standards. Opioid treatment accredited program standards will be out in 2016. They are working with state sheriff's associations to do regional training.

Mike Jackson closed out the day by informing the group that NIC has been able to fund presentations at conferences and to bring in Technical Resource Providers to do the presentations. He also encouraged everyone to join and use the LJN Forum.

Day 2 - Tuesday, September 29, 2015

Housekeeping

Mike Jackson

Mr. Jackson went over the process for submitting travel claims with the group.

He then forwarded some questions from the New York Department of Corrections. They would like to know if anyone in the LJN is using unit management. New York is also looking for examples of gender responsive programs for women.

Legal Updates

Carrie Hill, Esq.

Ms. Hill began her overview by discussing the hot topics in 2015 and the basis for the legal decisions that affect the way jails do business. These hot topics include:

- Custom, Policy or Practice Discussion
- ICE Detainers
- Supervisor Liability
- The Prison Litigation Reform Act (PLRA)
- Rule 68E
- Marriage (*Obergefell v. Hodges*)
- Religious Land Use and Institutionalized Persons Act (RLUIPA) - Religious Programming (*Holt v. Hobbs*)
- Searches
- Use of Force
 - *Kingsley v. Hendrickson*-regarding pretrial detainees
- Duty to Protect (*Taylor v. Barks*)
- Restrictive Housing/Segregation Debate-Duty to Protect Issue
- Priority Enforcement Program (PEP)

- HIPAA (Exemption)

The group will be able to add topics during the presentation. She provided the group with information on her background in corrections and legal experience with correctional organizations. She started her career in the prison system but has been doing jail defense work for the majority of her career. She pointed out that it isn't the attorney's job to run jails; it is the job of the sheriff. Her job is to provide input.

Ms. Hill emphasized that everything in policy and procedure should be backed up with legal authority, either case law or statutes, in the event they have a problem. It is important that the officers in the housing units have this information too.

She pointed out that it has been her experience that most report writing is not the best so the agency should develop report writing instruments that assist in making the issues clearer. That way if something goes wrong the jail can defend the staff involved in the incident. There seems to be more incidents involving use of force as the inmate population becomes more volatile. If something goes wrong agencies need to make sure they have defensible training, report writing, and policies and procedures. Check with your county counsel if you have questions.

Ms. Hill cautioned the group to remember a few things:

- Policies and procedures should contain a statement that they are guidelines (*Sandin V Conner*).
- Lean heavily on the language from *Florence v. Board of Chosen Freeholders of the County of Burlington*, (566 U.S. – 2012). The concept of “substantial deference” is an excellent defense tool when defending actions in the jail.
- Officers must articulate the rationale for the actions taken in the narrative section of the incident report. There must be a section for a narrative in the incident report form.
- Check/track grievances – Grievances can be a barometer of what is happening in the facility. It is also important to track the grievance responses. Administrators need to ask if there a rationale for the response or are there alternatives to the response?

ICE Detainers – Prior to February 2014 jails had been told that ICE detainers were mandatory, and as a result jails were holding inmates for 48 hours past their release date.

Ms. Hill discussed mandatory vs. discretionary actions. Holding inmates waiting for ICE is not mandatory, as a point of law, by the courts. A federal district court found a sheriff liable for holding the inmate on an ICE detainer past his release date. This was a violation of the inmate's 4th amendment rights. Ms. Hill's advice is to reject ICE detainers minus judicial authority. The use of ICE forms I247 D and 247N is a voluntary process.

- I-247N Notification Form:
 - Identifies why the Department of Homeland Security (DHS) believes the individual is a removable alien and why they are an enforcement priority.
 - Is a voluntary notification form.
 - Requests 48 hour advance notification of release from facility to ICE.
 - Does not require the agency to hold an individual beyond the point at which he/she would otherwise be released.
 - Notification is by mailing, emailing or faxing.
- I-247D Detainer:
 - Identifies why DHS believes the individual is a removable alien and why they are an enforcement priority.
 - Is a voluntary notification form.
 - Requests 48-hour advance notification of release from facility to ICE.
 - Does not require the agency to hold an individual beyond the point at which he/she would otherwise be released.
 - Notification is by mailing, emailing or faxing.
 - Is not supported with judicial authority, only ICE's checking of the box stating probable cause exists.
 - Discuss with Sheriff/Director and county counsel for interpretation.

Sheriff's want to comply/cooperate with DHS but also want to ensure they have the legal authority to hold the inmate. There is no standard for how long can you hold someone after they have they have been released by the court. In Los Angeles they can be released directly from the court

Different agencies have different policies for dealing with ICE. The agency can ask if the inmate is foreign born, to comply with the Geneva standard, and notify their embassy. ICE can ask to see the inmate. It isn't good to transfer the inmate to ICE inside the secure perimeter when they are being released. It is cleaner if they are outside the facility, but either way can work. Agencies should track the data on this.

Supervisor Liability: Ms. Hill pointed out that there is no liability unless the supervisor was involved in the incident. For a municipality/county to be liable for the actions of its employees the plaintiff must show that the municipality had adopted a policy, practice, or custom that was the moving force behind the constitutional violation. (*Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694 (1978))

Ms. Hill told the group that an agency can also be liable for the actions of an employee if there was deliberate indifference. In *Starr v. Baca* the ACLU argued that Sheriff Baca knew what was going on and did nothing to change the climate in the jail. He gained this

knowledge from weekly reports of incidents. There can be personal liability if you ignore problems. The courts are looking for a pattern of indifference.

The standard/test for deliberate indifference includes:

- There is a substantial risk of serious harm
- Knowledge of the risk
- Disregard the risk – were you indifferent to the situation with intent and with thought
- The conduct caused actual harm
- In *Willis v. Baca* (Oct. 18 2013) the court found Sheriff Baca had personal liability in the amount of \$100,000 for allowing a policy, practice, or custom that caused harm.

Ms. Hill emphasized that supervisors need to look at what is happening in the jail by reviewing grievances, suicides and suicide attempts, and use of force incidents. In California inmates are spending more time in jail, due to AB 109, and this increased length of stay creates a substantial threat in the facility. Administrators need to “own” mistakes and take appropriate corrective action.

The incident report should clearly articulate the need for force. In *Porro v. Barnes* an inmate got tased three times while he was secured in a restraint chair. The agency was able to make the case that this was an isolated event rather than a practice. Agencies need to discipline the employee(s) involved in these types of incidents and revise training, retrain or reinforce the policy at briefings.

To avoid liability agencies need to conduct after incident reviews, either formal or informal, and take corrective action. Agencies should also conduct self-audits on a daily basis to identify weak areas and make improvements. It is important to acknowledge that something was wrong and steps were taken to improve. The law does not require perfection.

Turner v. Safley (1987) has become the standard regarding whether the courts can assume jurisdiction over a violation of inmate rights. The “Turner Test” has four elements:

1. Is there a ‘valid, rational connection’ between the regulation and the legitimate governmental interest put forward to justify it?
 - a. What is the rationale - why do we do what we do? This is why incident reports require a narrative. As an example: two officers needed to enter an inmate’s cell. What was the rationale both for entering or not entering the cell? Another example: an inmate is on 15 minute, heightened watches and the officer leaves that post to assist another officer being attacked and misses a security round. Is there a rationale? Is it defensible? Is there a substantial

risk of harm? The way the deputy writes the report is crucial. Either way it can be right.

2. Are there alternative means of exercising the basic rights that are available to the inmate? The agency must show they are being reasonable, and there are alternative ways to get the need met.
3. The impact that the accommodation of the asserted right will have on officers and other inmates and on the allocation of prison resources? (The ripple effect)
4. The existence of obvious, easy alternatives-"exaggerated response". As an example: all inmate-to-inmate mail is prohibited in an effort to prevent escape attempts, there are reasons to prohibit inmate-to-inmate mail but are there alternatives.

In-Custody Marriages: The *Turner* decision addressed inmate marriages. In this case inmate marriages were not allowed without the express consent of the warden. Additionally the men in the facility were allowed to marry but not the women. The rationale for this policy was that women's crimes involved dependency on men. There was no alternative means for women to get married. The Supreme Court found the policy to be unconstitutional, as there was no legitimate governmental interest and no rationale.

In another case, *Obergefell v. Hodges* (June 26, 2015), addressed the right of same sex couples to marry under the Due Process Clause and Equal Protection Clause of the 14th Amendment. How do jails handle this? Denying same sex marriages has weak rationale. There is no legitimate governmental interest to deny a marriage. Length of stay can be relevant in these decisions. Most states don't require that inmates be allowed to touch to marry. Basically jails just need to supply the paperwork. Jails need to review their policies regarding housing assignments, visitation, etc.

Breastfeeding: There is no case law on this issue - "are we required to allow a female inmate who is breast feeding to be allowed to pump and store the milk?" Ms. Hill stated that there is no constitutional right to breastfeed, it is privilege. What is the rationale for denying breastfeeding? Ms. Hill gave a list of possible reasons and medical issues to justify not allowing breastfeeding. She asked the questions: Are there alternatives? Yes, except in unusual circumstances, the baby can be fed infant formula. Is denying the request to pump and store breast milk an exaggerated response? No, due to issues with sanitation and storage of the milk, denying the request may be a legitimate response. Agencies should review the issue on a case by case basis. Several agencies do allow pumping breast milk and they are doing a pilot program in Los Angeles, based on a San Diego policy. It is very infrequent occurrence; so does an agency need to have a policy? The answer is not really. Agencies can review requests on a case by case basis per the US Supreme Court.

Publications: Can jails deny access to books such as “Fifty Shades of Grey”? Are words enough to cause disruption? Ms. Hill pointed out that there are reasons to deny access to specific books and publications. An example of possible troublesome publication is the *Satanic Bible* – the Bureau of Prisons allows it in, however access is tied to behavior.

Ms. Hill explained that agencies can deny books that tell inmates how to assemble a bomb or that are racially biased. Jails can also limit television programming and newspapers with a reasonable justification. Facilities can deny access to unsolicited copies of *Prison Legal News* for example. The publishers are suing jails because they didn’t notify the publisher that copies of the publication were denied. Some facilities subscribe to this publication to get around this. Ms. Hill has a form to notify the publisher that the publication has been denied. Inmates can file a grievance. However, this is not just related to newspapers, *Prison Legal News* is now sending in unsolicited books. Five such books that dealt with rape, racism and prison uprisings have been called into question in Texas. The 5th Circuit court rendered a decision that jails can have a governmental interest in denying access to certain publications. Paperwork denying books only need to be sent to the publisher one time, magazines must be notified on an issue by issue basis. The denial notice should be sent by someone high in the organization, e.g. sheriff or jail administrator. Publications can be put into the inmate’s property and given to them upon release, but it is still a rejection.

PREA: PREA is a federal law; however the regulations are voluntary for jails unless they house federal or state inmates. Ms. Hill suggested that if a facility can’t be PREA compliant they can use *Turner* as a rationale for semi-compliance. It all comes back to “duty to protect”. For example, officers should announce at the beginning of the shift that both male and female officers will be in the unit and the inmates are required to be dressed at all times. Ms. Hill informed the group that incidental viewing of an unclothed or partially unclothed inmate is okay, as it is part of the officer’s job. It can be done with justifications. In a jail in Florida they strategically masked cameras that viewed the showers and toilets.

Religious Rights and the Religious Land Use and Institutionalized Persons Act of 2000¹ (RLUIPA) 42 U.S.C. §2000cc-1(a)-(2): Inmates are afforded some basic rights with regard to religious freedoms while incarcerated.

¹The **Religious Land Use and Institutionalized Persons Act (RLUIPA)**, is a federal law that prohibits the imposition of burdens on the ability of prisoners to worship as they please and gives churches and other religious institutions a way to avoid burdensome zoning law restrictions on their property use. It also defines the term “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”

- Prisoners do not lose all constitutional rights as a consequence of incarceration. They still have the right to exercise of religion.
- Prisoners have the right to sue under the First Amendment.
- Inmates can also sue under RLUIPA.

Several Supreme Court decisions have addressed the issue of freedom of religion for inmates.

- In *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) the district court and the appeals court determined that prison policies could be sustained only if the state showed that the challenged regulations were intended to and did serve the penological goal of security, and that no reasonable method existed by which prisoners' religious rights could be accommodated without creating a bona fide security problems.
- In *Cutter v. Wilkinson*, 544 U.S. 709 (2005); 125 S.Ct. 2113 (2005) a unanimous decision by the United States Supreme Court, with Justice Ginsberg delivering the opinion stated: "On its face,... the Act [RLUIPA] qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause."
- In *Holt v. Hobbs* (January 20, 2015), the Supreme Court addressed the following issues:
 - Whether the Arkansas Department of Corrections' no beard growing policy violates RLUIPA or the First Amendment; and
 - Whether a ½ inch beard would satisfy the security goals sought by the policy.
 - Holt maintained that his Muslim beliefs required him to grow a beard (A ½" beard was a compromise to the outright ban in the prison, ¼" beards were already allowed for medical reasons.)
 - Arkansas corrections officials claimed their grooming policy prohibiting beards promoted hygiene and safety. They didn't meet the RLUIPA test when they cited only safety and security concerns (hiding contraband, altering identity) as a reason for restricting the growing of beards.
 - The Supreme Court found that the defendants failed to show why they couldn't accommodate the beard by conducting additional security checks, etc. especially in light of the fact that a beard for medical reasons was allowed.

In making these decisions the Court looked at the RLUIPA test and the Establishment Clause of the First Amendment. The RLUIPA test addresses the questions:

- Has the policy substantially burdened the exercise of the religion?
- If "yes" does the regulation create a substantial burden on the prisoner's free exercise of religion, then officials must have a compelling governmental interest for its actions.

- If “yes” then the religious practice must be enacted in the least restrictive means.
 - Use objective criteria; and
 - Make a genuine effort to consider alternatives.

The Establishment Clause prohibits the government from making any law “respecting an establishment of religion.” This clause not only forbids the government from establishing an official religion, but also prohibits government actions that unduly favor one religion over another. It also prohibits the government from unduly preferring religion over non-religion, or non-religion over religion.

Some factors jail administrators should consider when making rules regarding religion are:

- Religious volunteers can’t go to the inmates; the inmates need to come to them.
 - In the past agencies have allowed religious representatives to go from unit to unit to talk with the inmates. They needed to have this religious group come into the unit and ask who wants to talk to them rather than randomly approaching inmates in a housing unit.
- Keep Christmas decorations generic and pay attention to grievances around seasonal religious activities.
- If a jail allows religious services in the housing unit, and other inmates can hear them, it may be a violation of the Establishment Clause.
- NA and AA are considered to be religious groups. The courts and jail administrators must make alternative substance abuse treatment available if the inmate objects to attending court ordered AA or NA meetings, per the Supreme Court.
- In *Lamb v. Arpaio* inmate Lamb claimed that playing “Christmas” music all day in the housing units forced him to take part in and observe a religious holiday without being given a choice. The defendant’s position was that the music was multicultural, and was played for the purpose of trying to raise morale among the inmates. The court found for the defendant using the three prong “Lemon” test:
 1. The breadth and variety of the songs and holiday traditions undermines any claim that any one tradition or belief system was being established within the meaning of the First Amendment.
 2. In the context of the holiday season, a broad range of songs, including Dr. Demento and the Chipmunks, does not have a principally religious effect.
 3. The music was multi-cultural and included humorous novelty songs and festive holiday-related secular songs, which indicates that there was no attempt to foster or promote religion or any particular religious tradition.
- Another example of using the RLUIPA test to determine if policy is appropriate under the law involves the wearing of religious head coverings. The rationale for denying the wearing of head coverings primarily involves issues with concealing identity, hiding contraband, and generic security issues. Jails will not be successful in court if they don’t allow religious head coverings. Some agencies allow the

wearing of religious head coverings in the cell and during services and the inmate is subject to more searches.

Some examples of issues around freedom of religion include:

- An officer in Wayne County just started practicing being an Israelite and wants to wear religious head gear.
- Orlando FL had an officer who couldn't work Fridays and certain holidays because of his religion. He exhausted his leave, resigned and filed a complaint with EOC. The county had to take him back and accommodate a modified schedule.
- Bexar County had an officer in the academy that couldn't work on Saturdays and provided that information at the time of her employment. The jail had to accommodate the schedule modification
- Jeff Newton has a negotiated shift bid and an officer bid for a shift that did not accommodate her religion and the agency made no accommodations.
- In California officers couldn't have a beard because it interferes with the use of masks on air packs and other safety equipment. This case is in litigation right now.

Ms. Hill advised the group that they should have a religious head covering policy. Another option is for the agency to supply head coverings. In St. Louis the police want two photos, both with and without the head covering, or they have the arrestee pull the head covering back behind their ears. In most religions that require head coverings they are there to cover the neck and chest, as well as the head.

Agencies must allow prayer beads and kosher diets. If the inmate's religion requires a religious dagger they can take a photo of the dagger to keep with them.

Ms. Hill asked the group how they know if the espoused religion is "bona fide" religion. Atheism is recognized as a religion by the Supreme Court. If the inmate sincerely believes something is required for his/her religion, even if it is not one of the top "recognized" religions, agencies should accommodate it.

While the agency can ask for the inmate's religious affiliation at booking, inmates can change it at any time. Agencies can also inquire into the inmate's sincerity with adherence to the religion. The following are some examples:

- A Jewish inmate on a kosher diet is seen eating pork rinds. Food can be kosher without the stamp.
- Agencies don't need for the inmate to have perfect adherence to the religion to accommodate for the religion.
- Agencies can ask the inmate to sign a religious contract for a religious diet. The inmate agrees to be consistent with religious diet, no giving it away, or eating items

that are not part of the diet. Ms. Hill advised giving the inmates some leeway unless they throw the diet on an officer. (Refer to Appendix M for sample forms that can be used for religious diets.)

Ms. Hill brought up some other issues related to freedom of religion:

- **Chaplains** – Agencies don't have to have a chaplain for every single religious group, however the inmate has the right to have his/her personal religious advisor visit.
- **Wine** – Agencies have the right to deny the use of wine in religious services in the facility. Some just have wafer only or allow the priest to bring in a "non-intoxicating" amount of wine.
- **Religious Diets** – Agencies have had problems by not providing the Halal diet or kosher diet. A county in Louisiana is in a suit right now and were granted a summary judgment. They are going to appeal. A kosher diet can meet the dietary needs of Muslim inmates too. Agencies should err on the side of providing the religious diet. For inmates following a Halal diet it can be enough to serve a halal certified meat or the equivalent. The 5th Circuit court decision that the Texas prison system did not have to provide kosher meals due the undue hardship on the system and the ability of the inmates to get alternative vegetarian diet may be of benefit to agencies that are having a difficult time providing religious diets. However, the courts are erring on the side of the religious meals. Fulton County provides a kosher vegan meal, as vegetables are kosher. Do agencies have to have a separate refrigerator and microwave for halal and kosher meals? Ms. Hill told the group to do their very best. Jack Herron from Oklahoma County told the group that their food vendor has provided a double wrapped kosher meal so they don't have to worry about contamination.

Ms. Hill asked the group to please reach out to each other for answers. Look at this on a case by case basis and in some cases agencies didn't have to give kosher or halal meals. Agencies should monitor commissary purchases for those inmates on medical and religious diets.

Ms. Hill brought up some other issues for the group to think about.

- A lot of agencies are having a hard time getting imams and rabbis to come into the jail, primarily because committing crimes is against their religious tenants'.
- Never allow an inmate to lead a religious service – not a good thing to have one inmate over another.
- When an inmate is locked down do not deny him/her access to religious items.

- Agencies must have justification to shave the heads of inmates, such as insect infestations. Rastafarians should be allowed to keep their dreadlocks and be accommodated with extra searches.
- Inmates wearing a Kofi on the top of their head can be permissible with extra searches.
- If an inmate loses a headpiece then they can either purchase a new one through the commissary or the chaplain can provide one. All headpieces should be the same color.
- A newer religion, Odinism, has the potential to be dangerous in a jail setting. Odinism is playing a larger and larger role in prison culture. White supremacist groups have historically used prisons as recruiting grounds, as an already largely segregated population is an easy target for racial supremacists. Add to this a religion promising racial superiority, in addition to a mystic and warrior mythology, and it creates an almost perfect storm for racial Odinism to prosper. Odinism has had a prison existence since at least the mid-1980's, but really began to surge in the mid 1990's. This surge was bolstered in part by the sudden explosion of white supremacist music and a movement for more tolerance of non-mainstream religious practices. As of 2007, at least 15 states had laws explicitly allowing Odin worship to take place in prisons, and The Southern Poverty Law Center estimates that right-wing racist Odinism within prison populations is the fastest growing Odinic sect in the world.

Use of Force: Ms. Hill began the discussion on use of force by referencing the *Kingsley v Hendrickson* decision out of Wisconsin that deals with the use of force on pretrial detainees. She pointed out that report writing in use of force cases usually proves to be inadequate in thoroughly documenting the facts of the incident. The facts in this case were almost irrelevant, the inmate in housing unit was in his cell and there was a piece of paper covering the light. Officers ordered the inmate to take the paper down, several times, and he wouldn't do it. As a result of the inmates refusal to comply the officers decided to remove him from his cell. He ended up claiming injuries and being tased. The real problem with the way this case was handled in the Supreme Court and the conflicting orders given to the jury regarding what use of force means.

Ms. Hill told the group that agencies need to have an "objective standard" for the use of force. An objective standard can be defined as the force used was:

- Justifiable from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight.
- Within the limitations of the totality of the circumstances presented at the time of the incident.

- Any interpretation of reasonableness about the amount of force that appears to be necessary in a particular situation, must allow for the fact that officers are often forced to make split-second decisions in situations that are tense, uncertain and rapidly evolving.

The use of an objective standard adequately protects an officer who acts in good faith and qualifies the officer for immunity in the incident. Ms. Hill emphasized that thorough documentation in incident reports is essential in justifying use of force. Considerations in developing a reasonable objective standard are composed of these seven factors gleaned from *Hudson v. McMillan* and *Graham v. Conner*.

1. **Perceived Threat** - Force may be a legitimate option if an officer perceives a substantial threat to safety, security, order, discipline, control or other legitimate penological interest. If an inmate is secured in a cell and acting out, calling names, spitting, etc. is it necessary to use force to stop his behavior?
2. **Need for Force** - If the officer perceives a substantial threat to safety, security, order, discipline or other legitimate interests, force may be used if the responsible officer infers that:
 - a. Force will be required to subdue or control an inmate; resolve a threatening situation; or exigent circumstances require a swift resolution which can only be accomplished by employing force.
 - b. When it is determined that the force will be necessary to resolve the threat, the officer should fully document the basis for his inference that force was the best option for resolving perceived threats.
3. **Amount of Force Used in Relation to the Need for Force** - Officers are under legal obligation to make efforts to use only that force which is reasonable and necessary to subdue or control inmates; enforce compliance with lawful orders; prevent escapes, or otherwise protect safety, security and order.
4. **Effort was Made to Temper Forceful Response** - When force is necessary, officers should make reasonable efforts to limit the amount of force used and document any efforts to limit the amount of force. Any efforts made to temper the severity of the force are an important element in justifying the use of force.
5. **Extent of Injury** - "The extent of injury suffered by an inmate is one factor that may suggest whether the use of force could plausibly have been thought necessary in a particular situation, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." (*Hudson v. McMillian*, 112 S.Ct. 995 (1992)). Officers are not medical professionals and should only document what they observed.
6. **Severity of the Issue** - The reports must justify the legitimate governmental interest in using force. Officers are under legal obligation to make efforts to use only

that force which is reasonable and necessary to subdue or control inmates; enforce compliance with lawful orders; prevent escapes, or otherwise protect safety, security and order.

7. **Actively Resisting** – It is essential to describe, in detail, what the inmate was doing that justified the force. To say he was resisting doesn't tell the reader anything. Reports should be specific regarding the inmate's actions. Is the inmate fighting, biting, spitting etc.

Ms. Hill told the group that a reasonable objective standard is less about what the officer does but what the inmate does to elicit the response. Use of force requires a narrative to explain what happened in great detail as no one will remember the specifics three years later when the incident goes to court. The rationale behind the officer's actions is a key factor used to document and provide a rationale for the use of force. The perceived threat must be thoroughly documented in the incident report.

She emphasized that reports on use of force need to focus on the inmates behavior. Jails could include sections for the seven criteria in the report writing form. This information can be used as a tool for review of the use of force incident or the report. If an agency has the ability to keep the reports in draft format until final approval, they should do the review before finalizing the report.

Ms. Hill went on to discuss the use of video to document the inmate's actions and the use force. Video can enable the reviewer to really get a take on how officers behave. She brought up some other considerations, i.e. did the perceived threat cause imminent danger to staff or other inmates. The need for force is more difficult to justify if the inmate is already secured in a cell.

Ms. Hill then brought up the issue of "Bystander Liability". In *Kitchen v. Dallas County Texas*, Civ. No. 13-10545 (5th Cir. July 14th, 2014), the suit filed by the widow of inmate Kitchen claimed that Kitchen was the victim of excessive force that resulted in his death by complications of physical restraint including "mechanical asphyxia" due to neck restraint during the struggle. In that case not only the officers using force but the officers and supervisors standing by on the scene were liable because they disregarded the medical needs of the inmate and did not intervene. She emphasized that officers or supervisors that witness excessive force should step in to mitigate the forced being used. Often officers and even supervisors don't want to intervene in the actions of other officers or supervisors. Agencies need to train staff to do this to make sure another officer doesn't step over the line.

Ms. Hill again went over other critical factors in documenting use of force.

- Was an effort made to temper forceful response?
- If the inmate is injured, he/she is not allowed to refuse medical care.
- If the inmate is “actively resisting” the incident report should describe what the inmate is doing.
- Remove the “use of force continuum” in policy and procedure and use it only for training.

Ms. Hill then brought up two cases where force was used to obtain fingerprints and a blood draw. In one jurisdiction the officer takes the inmate to “live scan”, the inmate tenses up and the officer administers two knee strikes to get him to loosen up. In court this was considered to be an excessive use of force. In another instance the inmate did not want to comply and give a blood sample so a decision was made to conduct the draw while the inmate was secured in a restraint chair. The officer wedged a boot under the inmate’s elbow and the arm of the chair. “Boot wedging was not in the owner’s manual.”

Following the presentation several members of the group mentioned that they were going to go back and change their report writing criteria and initiate training.

RULE 68 (e) FRCP - Rule 68 of the Federal Rules of Civil Procedure is designed to encourage settlement and avoid litigation and its associated costs. The rule permits a defendant to offer the plaintiff a settlement for a certain amount, with legal costs then accrued. The plaintiff has 14 days to accept the offer. If the plaintiff does not accept the offer, the plaintiff must obtain a more favorable judgment when they go to trial than the settlement amount offered or pay the defendants’ post-offer costs.

Prison Litigation Reform Act (PLRA) – Ms. Hill informed the group that under the PLRA consent decrees can only last for two years. However, if an agency wants or needs the decree to go longer they can. She pointed out that the agency must take some affirmative action to actually make the consent decree go away.

Searches: Females can pat search both male and female inmates. Officers should never search to determine the gender of an arrestee or inmate. Officers conducting strip searches should be the same gender as the person being searched. Agencies can have two officers present for the search. Agencies can also video the officers conducting the search to make sure they don’t do or say anything inappropriate.

Future Meeting Topics

The next meeting of the Large Jail Network is scheduled for March 21-22, 2016 at the Corrections Academy in Aurora, CO. The following are the topics that will be on the agenda for the meeting

- Shaping the message to legislators/decision maker
- Taking advantage of jail population reductions?
- Staffing Analysis Update
- Jail intelligence collection/dissemination
- Program Evaluation
- Correctional Officer Wellness
- Major Incident Debriefs

Mike Jackson told the group that they need seven presentations for next meeting. As the LJNI budget is very tight he is looking for volunteers to do presentations.

Appendices

LARGE JAIL NETWORK MEETING

September 28-29, 2015

National Corrections Academy

Aurora, CO

Agenda

Monday, September 28

- 8:00 a.m. Introduction and Overview.....Mike Jackson, NIC
- 8:30 a.m. Reduction of Arrests/Incarceration of the Mentally Ill..... Andy Ferguson
Orange Co. CA SO
- 9:15 a.m. Planning and Implementing Effective Mental Health Services in Jails.....David Stephens
NCCHC
- 10:00 a.m. High Liability inmates Henry Reyes
Bexar Co., TX
- 12:00 noon LUNCH
- 1:00 p.m. Open Forum: Hot Topics Jeff Newton
Riverside Regional Jail, VA
- 3:00 p.m. Professional Certification – cost vs. value for the agency ACA, AJA, NSA
- 4:15 a.m. Association UpdatesACA, AJA, NSA, NCCHC
- 5:00 p.m. ADJOURN

Tuesday, September 29

8:00 a.m. Legal Updates Carrie Hill

12:00 noon LUNCH

1:00 p.m. Legal Updates Carrie Hill

4:30 p.m. Future Meeting Topics Mike Jackson

5:00 p.m. ADJOURN

**15J2402 Large Jail Network Meeting Participants
September 28-29, 2015**

Agency/Organization	First Name	Last Name	Job Title	City	State
Fulton County Sheriff's Office	Mark	Adger	Chief Jailer	Atlanta	GA
Dane County Sheriff's Office	Richelle	Anhalt	Captain	Madison	WI
Lexington-Fayette Urban County Government	Rodney	Ballard	Director	Frankfort	KY
Charleston County Sheriff's Office	Willis	Beatty	Chief Deputy	North Charleston	SC
St. Louis County Government	Herbert	Bernsen	Director	Clayton	MO
Louisville Metro Government	Mark	Bolton	Director	Louisville	KY
Volusia County Division of Corrections	Marilyn	Chandler Ford	Corrections Director	Daytona Beach	FL
Hamden County Sheriff's Office	Nicholas	Cocchi	Asst. Superintendent	Ludlow	MA
Muscogee County Sheriff's Office	Dane	Collins	Jail Commander	Columbus	GA
Pierce County Sheriff's Office	Karen	Daniels	Assistant to the Chief	Tacoma	WA
Tarrant County Sheriff's Office	Alan	Dennis	Executive Chief Deputy	FT. Worth	TX
Kent County Sheriff's Office	Chuck	Dewitt	Captain	Grand Rapids	MI
Denver Sheriff's Office	Elias	Diggins	Sheriff	Aurora	CO
Las Vegas Metropolitan Police Department	Gary	Driscoll	Captain	Las Vegas	NV
Wayne County Sheriff's Office	Robert	Dunlap	Director	Detroit	MI
Lee County Sheriff's Office	Thomas	Eberhardt	Colonel	Fort Myers	FL
Los Angeles County Sheriff's Office	David	Fender	Chief	Los Angeles	CA
Essex County Sheriff's Office	Michael	Frost	Asst. Superintendent	Middleton	MA
Tulsa County Sheriff's Office	Stanley	Glanz	Sheriff	Tulsa	OK
Travis County Sheriff's Office	Michael	Gottner	Major	Austin	TX
Bernalillo County Metropolitan Detention Center	Phillip	Greer	Chief	Albuquerque	NM
Pinellas County Sheriff's Office	Paul	Halle	Jail Administrator	Clearwater	FL

**15J2402 Large Jail Network Meeting Participants
September 28-29, 2015**

Dallas County Sheriff's Office	Jason	Hartgraves	Asst. Chief	Dallas	TX
King County Sheriff's Office	William	Hayes	Director	Seattle	WA
Oklahoma County Sheriff's Office	Jack	Herron	Major	Oklahoma City	OK
Hennepin County Sheriff's Office	Carrie	Hill	Legal Counsel	Maple Grove	MN
Orange County Department of Corrections	Bryan	Holt	Deputy Chief	Orlando	FL
Ada County Sheriff Office	Scott	Johnson	Captain	Boise	ID
Miami-Dade Corrections & Rehabilitation	Daniel	Junior	Assistant Director	Miami	FL
Tulsa County Sheriff's Office	Eric	Kitch	Major	Tulsa	OK
Middlesex County Sheriff's Office	Peter	Koutoujian	Sheriff	Medford	MA
Maricopa County Sheriff's Office	Brian	Lee	Deputy Chief	Phoenix	AZ
Salt Lake County Sheriff's Office	Pam	Lofgreen	Chief Deputy	Salt Lake City	UT
Prince George's County	Mary Lou	McDonough	Director	Upper Marlboro	MD
San Joaquin County Sheriff's Office	Kimberly	Moule	Captain	French Camp	CA
Alvin S. Glenn Detention Center	Ronaldo	Myers	Director	Columbia	SC
Broward County Sheriff's Office	Keith	Neely	Lt. Colonel	Margate	FL
Riverside Regional Jail Authority	Jeffery	Newton	Superintendent	Hopewell	VA
Monroe County Sheriff's Office	Patrick	O'Flynn	Sheriff	Rochester	NY
Los Angeles County Sheriff's Office	Eric	Parra	Chief	Los Angeles	CA
Travis County Sheriff's Office	Wes	Priddy	Major	Austin	TX
Lake County Sheriff's Office	Mark	Purevich	Jail Administrator	Crown Point	IN
Bexar County Sheriff's Office	Henry	Reyes	Chief	San Antonio	TX
Baltimore Count Department of Corrections	Deborah	Richardson	Director	Towson	MD
Collier County Sheriff's Office	Chris	Roberts	Chief of Corrections	Naples	FL
Tulsa County Sheriff's Office	Michelle	Robinette	Chief Deputy	Tulsa	OK
Arapahoe County Sheriff's Office	Jared	Rowlison	Captain	Centennial	CO

**15J2402 Large Jail Network Meeting Participants
September 28-29, 2015**

Multnomah County Sheriff's Office	Michael	Shults	Chief Deputy	Portland	OR
Clayton County Sheriff's Office	Robert	Sowell	Jail Administrator	Jonesboro	GA
Palm Beach County Sheriff's Office	Alfonso	Starling	Major		FL
Franklin County Sheriff's Office	Geoff	Stobart	Chief Deputy	Columbus	OH
Greenville County Detention Center	Marshall	Stowers	Captain	Greenville	SC
Blue Ridge Regional Jail Authority	Timothy	Trent	Administrator	Lynchburg	VA
Orleans Parish Sheriff's Office	Jerry	Ursin	Chief Deputy	New Orleans	LA
Davidson County Sheriff's Office	Tony	Wilkes	Chief of Corrections	Nashville	TN
Limestone County Sheriff's Office	Dennis D	Wilson	Sheriff	Groesbeck	TX
Caddo Parish Sheriff's Office	Robert	Wyche	Commander	Shreveport	LA