

## Primer: Prisoner Liability Lawsuits and The Use of Force

According to the Americans for Effective Law Enforcement, the percentage of prisoners winning trials from 1970 through 1994 was 56%. This does not include settlements. The most frequent claim categories were medical care, confinement conditions, failure to protect, and excessive use of force. This update focuses on use of force.

### The courts consider the following in evaluating claims:

- Have common problems (such as out of control inmates) been anticipated and planned for?
- Do procedures minimize discretionary decisions at the operational level?
- Is there specific training and guidance to operational staff on how to legally control inmate behavior?
- Is there regular monitoring of operational standards and job performance?
- Have necessary personnel and resources been provided to ensure compliance?

Deliberate indifference is the crux of any prisoner claim. It is a choice made from alternatives, made with some knowledge of or appreciation of what the consequences will be, made with knowledge of the problem or issue to be addressed, and made with some time to evaluate the choices. For excessive force, it also requires a state of mind to be shown.

The question to be asked is, “Does the harm complained of impose an atypical and significant hardship on the prisoner in relation to the ordinary incidents of prison life?” Sandin v. Conner, 115 S. Ct. 2293, 1995. Sandin:

“administrative segregation without more simply does not constitute a deprivation of a constitutionally cognizable liberty interest.”

However, if the officer(s) knew or should have known that (1) there was a substantial risk of serious bodily injury from a practice, and (2) the officer(s) were deliberately indifferent to the known substantial risk, then a court might conclude that the harm was of “an atypical and significant hardship on the prisoner”, and thus, the county would be legally liable.

### What This Means For Counties

1. Review your county inmate behavior management protocols.
2. Train detention staff carefully on the criteria they are to follow in situations possibly requiring force to ensure inmate and staff safety.
3. Make sure that staff has opportunity to practice applying criteria in non-emergency situations.
4. Train staff on post-incident documentation criteria.
5. Management must regularly review and enforce compliance by staff with the operational criteria.

For more information, contact CTSI at 303-861-0507.