ASSESSING JAIL OPERATIONS, ROOT CAUSE ANALYSIS, FIRST AMENDMENT AUDITS

New Sheriffs School
September 14, 2022
INTERNAL ASSESSMENT

- Jail standards
- Risk management
- Policy and procedure
- Staffing
- Inmate behavior management
- Fire, safety, and sanitation
BENEFITS OF AN ONGOING INTERNAL ASSESSMENT PROCESS

- Monitor compliance with standards and legal requirements
- Monitor staff compliance with policy and procedure
- Determine if you are meeting established goals
- Identify areas needing change
ASSIGN SOMEONE TO COORDINATE PROGRAM (COMPLIANCE OFFICER)

- Ensure reviews are completed and corrective action taken when necessary
- Track issues, concerns, and trends
- Provide information on issues requiring immediate attention
- Provide information for strategic or budget planning efforts
SIX STEP INTERNAL ASSESSMENT PROCESS

1. Identify what practice is to be assessed
2. Determine how you will assess the practice
3. Determine the frequency
4. Assign responsibility for conducting the assessment
5. Establish a schedule for the assessments
6. Establish a process to correct identified deficiencies
ASSESS PROCESSES AND OUTCOMES

**Assessing Processes:**

▪ Have you established effective practices and are you implementing the practices?

**Assessing Outcomes:**

▪ How well are your processes working – are they making a difference?
Step 1: Identify the Practice to be Assessed

- Physical Plant
- Administration/Management
- Personnel
- Booking and Release
- Security
- Emergency Response
- Sanitation Practices
- Food Services
- Health Care
- Inmate Supervision
- Inmate Behavior Management
What practices should be in place to address this standard?

“FACILITIES SHALL PROVIDE AN INMATE GRIEVANCE PROCEDURE TO ALL INMATES. THE GRIEVANCE PROCEDURE MUST INCLUDE AT LEAST ONE (1) LEVEL OF APPEAL.” MINIMUM JAIL STANDARD 1400-01.05(12)
IDENTIFY PRACTICES TO BE ASSESSED

What practice should be in place?

What would your expected outcome be (what should be occurring as a result of this practice?)

What policy and procedures, training, handbooks, inspection checklists, etc., must be in place to meet this practice.
STEP 2: HOW WILL YOU ASSESS PRACTICES?

Review  Audit  Inspect
Observe  Interview
STEP 3 - DETERMINE FREQUENCY OF THE REVIEWS

Daily  Weekly  Monthly  Quarterly  Semi-Annually  Annually
FREQUENCY MAY BE DETERMINED BY STANDARDS

<table>
<thead>
<tr>
<th>Annually</th>
<th>Quarterly</th>
<th>Weekly</th>
<th>Daily</th>
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</thead>
<tbody>
<tr>
<td>Policies &amp; procedures</td>
<td>Fire drills for all staff members on every shift</td>
<td>Inspection of all security facilities</td>
<td>Sanitation and safety inspections</td>
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<td>Review a written and graphic evacuation plan</td>
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<td>Facility administrator or designee shall visit the facility’s living and activity areas</td>
<td>Inspect all food service areas</td>
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STEP 4: ASSIGN RESPONSIBILITY FOR CONDUCTING THE ASSESSMENT

The reviewer may have:

- Administrative responsibility
- Special qualifications
- Staff development

- Meal preparation and diets
- Inmate discipline
- Classification
- Staff training
- Emergency plans
- Maintenance
- Management of pharmaceuticals
- Evacuation plan
- Policies and procedures
STEP 5: ESTABLISH A SCHEDULE FOR THE REVIEWS

Review day-to-day operations

SCHEDULING REVIEWS ALLOWS YOU TO:

- Hold assigned staff accountable for completing the reviews
- Stagger the reviews of the course of the week/month/year

ASSIGNED STAFF ARE RESPONSIBLE FOR:

- Getting the reviews completed
- Documenting the results of the reviews
- Initiating whatever corrective action may be appropriate to the situation
STEP 6: ESTABLISH A PROCESS TO CORRECT IDENTIFIED DEFICIENCIES

Develop a corrective action plan that includes:

✓ Description of the deficiency
✓ Description of the measures necessary to correct it
✓ Persons responsible for completing corrective measures
✓ Expected completion date
Develop a system to review jail operations on an ongoing basis to:

- Assess compliance with standards and legal requirements
- Assess the degree to which policies and procedures are being followed
- Detect potential problems before they become major concerns
- Track the jail's progress on key performance indicators

Maintain control over your jail's operation and be able to address issues before they become major problems
ROOT CAUSE ANALYSIS

Why should you engage in it?
What are the processes?
What is needed to govern the process?
How to implement and overcome barriers.
Did it work?
“[B]lame and fault have never answered the big questions, such as ‘How did this [error] happen in the first place?’”

(Ritter, Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Non-blaming Practice?)
Criminal justice practitioners “...rank and file have been taught throughout their careers that silence on the matter [of errors] is usually the safest policy.”

(Doyle. Learning from Error in American Criminal Justice. 2010)
“The organization is:

▪ Informed about current knowledge of its field;
▪ Promotes the reporting of errors and near misses;
▪ Creates an atmosphere of trust in which people are encouraged to report safety-related information;
▪ Remains flexible in adapting to changing demands (by, for example, shifting from steeply hierarchical modes into “flatter” team-oriented professional structures); and
▪ Willing and able to learn about and adjust the functioning of its safety system.”

(Reason, 1997)
ROOT CAUSE ANALYSIS

What happened?
How did it happen?
Why did it happen?
How can it be prevented?
Warning signs missed?
“... jail risk management comes down to three key objectives:

(1) Protecting the safety of the community, inmates, jail personnel and visitors;

(2) Preventing property damage and loss; and,

(3) Preserving inmate rights.

Ultimately, the challenge is to achieve the first and second objectives without compromising the third.”

Events that may require you to conduct an RCA might include:

In-custody death or serious self-harm.

Escape

Inmate disorder

Trends of uses of force

Significant increases in mental health population and limited housing options

Uses of force increase on mentally ill inmates

Introduction of contraband

Compromised security systems

Increases in mandatory overtime

Physical plant issues

Staff sexual misconduct
WHY CONDUCT ROOT CAUSE ANALYSIS?

Establishes commitment to excellence through objective reviews of serious incidents, examination of emerging issues, and development and implementation of change strategies.

Establishes a culture of “..non-blaming, forward thinking, all stakeholder approach to criminal justice outcomes.” Doyle, 2014.

Role modeling leadership expectations.

Identifies system failures.
BARRIERS AND CHALLENGES

No leadership commitment
Local political environment
No commitment to “self critical” analysis
Culture of “blaming”
Lack of policy
Fear of findings/outcomes
Lack of training to accomplish
Legal resources
Others?
LEADERSHIP COMMITMENT

Fear

Politics and political will

Fundamental change in organization’s approach

Transparency and problem-solving rather than blaming

Look for the ROOT, not the symptoms
  ▪ Nothing much improved by solving the symptoms

Need for change to internal culture

Devote resources
  ▪ The “costs” of not changing
  ▪ Action planning paramount

Did it work?
Root Cause Analysis – not for the faint-hearted

Not much will change without self-critical analysis AND meaningful corrective action

Overcome the barriers
FIRST AMENDMENT
AUDITS
WHAT IS A 1ST AMENDMENT AUDIT?

“First Amendment Auditors”—individuals who specifically film on public property, police stations, jails, etc., to test the rights to film in a public space.

Many audits are non-violent and uneventful. But some encounters have escalated dramatically, resulting in arrest and litigation.

No particular organization.

Perceived violation of “auditor’s” rights?

Photographing/videoing public places or is it suspicious activities???
**First Amendment Audits** is a social movement, categorized by “auditors”, as activism or citizen journalism that tests their constitutional rights. Specifically, the right to photograph/video record in public places. They also believe that it promotes transparency and open government.

Law enforcement response has included auditors being unlawfully detained, arrested, assaulted, had camera equipment confiscated, weapons aimed at them for video recording in a public place.

These events have prompted law enforcement officials to release information on the proper methods of handling such an activity. For example, a document sponsored by the International Association of Chiefs of Police states that the use of a recording device alone is not grounds for arrest, unless other laws are violated.

“Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, as long as their actions do not interfere with the officer’s duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space.” [https://www.theiacp.org/resources/policy-center-resource/recording-police-activity](https://www.theiacp.org/resources/policy-center-resource/recording-police-activity)
Video public property – sidewalks, public easements or places open to the public.

Conflict arises when a property owner or manager states that photography of their property is not allowed.

Recording for personal use? Silence? Suspicious person?

Refusal to provide identification or to self - identify.

Arrested for obstruction of justice, disorderly conduct, or other perceived criminal behavior???
WHAT IS A PUBLIC PLACE?
ERIC SHYTE, GENERAL COUNSEL, MUNICIPAL ASSOCIATION OF SC

Types of forums:

- Traditional public forum
- Designated public forum
- Limited forum
- Non-public forums
WHY IS IT CALLED A FIRST AMENDMENT AUDIT?

Right to film, testing your compliance.

Two ways filming may occur:

▪ Bystander video.
▪ Intentional engagement.

How might you respond?

▪ My car?
▪ A victim?
Activity could be suspicious to law enforcement
Activity could cause other citizens to become concerned
Public streets, sidewalks, buildings and other public areas
Recitation of statutes and case law
Attitude, questions and baiting
Rushing in

Uncertainty—authority, applicable charges

Debating

Removing the recording device

Do not seize, do NOT destroy
As long as the auditor remains in a public place where they are legally allowed to be, they have the right to record anything in plain view, subject to very limited time, place, and manner restrictions.

Profane, insulting, derogatory language is not necessarily a crime.

Charge – disorderly conduct? Or are they just exercising free speech?
The rights exercised in a typical audit comes from the First Amendment, Fourth Amendment, and Fifth Amendment of the United States Constitution. Specifically, Freedom of Speech and Freedom of the Press under the First Amendment and Freedom from unreasonable searches and seizures under the Fourth Amendment, and the Right to Remain Silent under the Fifth Amendment.

Auditors attempt to exercise their First Amendment right to photograph and record in public while avoiding committing any crime. The reason for this stems from the Supreme Court's decision in Terry v. Ohio which held that it was not a violation of the Fourth Amendment to detain someone when the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

Is photography “suspicious behavior”? Should the person be detained?

Courts are concluding the fact that a person takes a photograph or makes an audio or video recording in a public place or in a place he or she has the right to be, does not constitute, in and of itself, a reasonable suspicion to detain the person, probable cause to arrest the person, or a sufficient justification to demand identification.
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