

ASSESSING JAIL OPERATIONS, ROOT CAUSE ANALYSIS, FIRST AMENDMENT AUDITS

New Sheriffs School
September 14, 2022

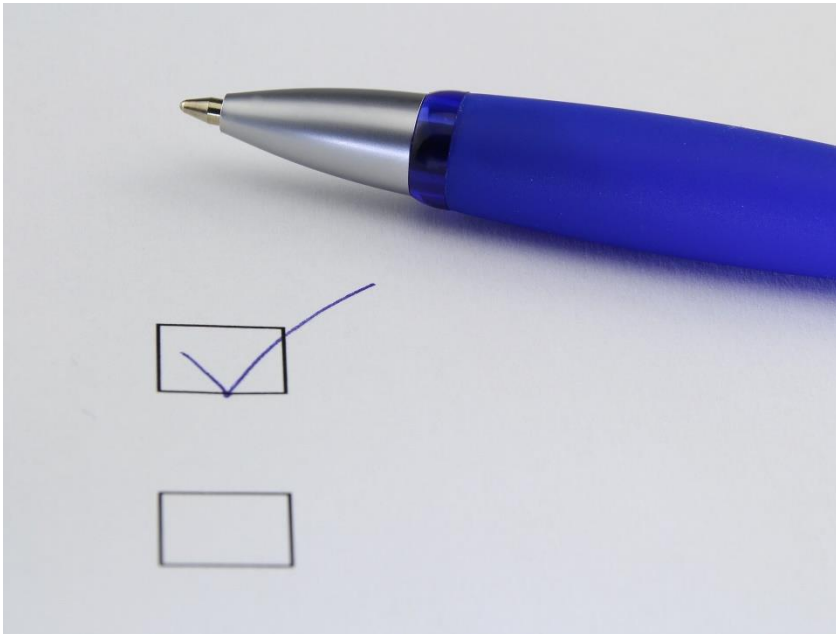


INTERNAL ASSESSMENT

- 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



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**



PRACTICES TO BE ASSESSED

“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)

What practices should be in place to address this standard?



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

Annually

- Policies & procedures
- Review a written and graphic evacuation plan

Quarterly

- Fire drills for all staff members on every shift

Weekly

- Inspection of all security facilities
- Facility administrator or designee shall visit the facility's living and activity areas

Daily

- Sanitation and safety inspections
- Inspect all food service areas

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

ASSESSING JAIL OPERATIONS

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?

WHAT HAPPENED?

“[B]lame and fault have never answered the big questions, such as ‘How did this [error] happen in the first place?’”

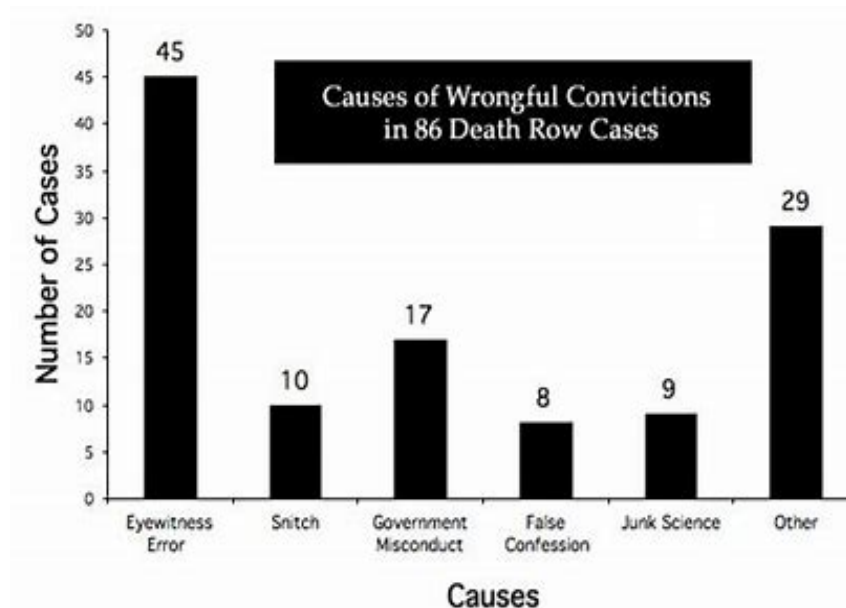


(Ritter, Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Non-blaming Practice?)

YOU TELL THEM...

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 OBJECTIVE OF RCA, INCLUDING...

“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?

RISK MANAGEMENT IN JAIL

“... 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?



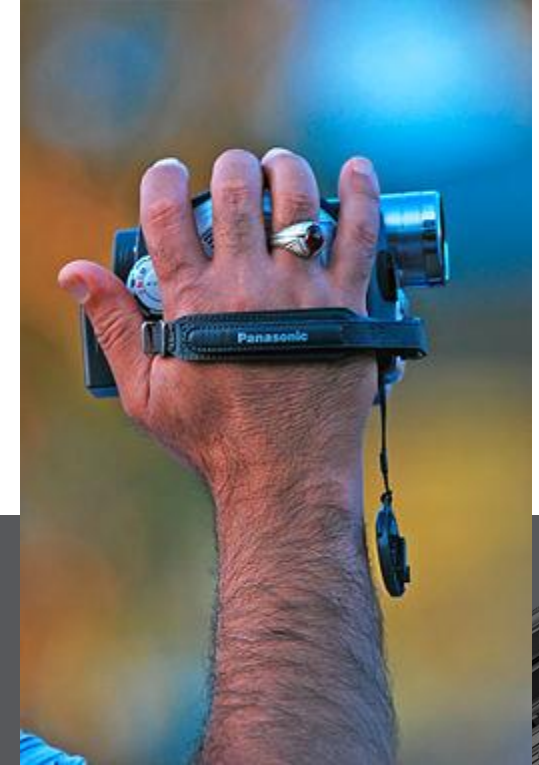
ROOT CAUSE ANALYSIS

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 - WIKIPEDIA

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>



FIRST AMENDMENT AUDITING

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 SHYTLER, 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?



TRAITS OF AN AUDITOR

ERIK LAMPHERE, DIVISION CHIEF-LITIGATION
OFFICE OF THE CITY ATTORNEY, COLORADO SPRINGS, COLORADO

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



TRAPS AND COMMON MISTAKES

ERIK LAMPHERE, DIVISION CHIEF-LITIGATION
OFFICE OF THE CITY ATTORNEY, COLORADO SPRINGS, COLORADO

Rushing in

Uncertainty—authority, applicable charges

Debating

Removing the recording device

Do not seize, do NOT destroy



FIRST AMENDMENT AUDITS

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?

FIRST AMENDMENT AUDITS

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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Jim Hart, CCE, CJM, MA
Jail Management Consultant

Jim.hart@tennessee.edu

(423) 413-7902

