

# Law Enforcement Liability Issues **From Hook Up to Lock Up**

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Presented by

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# Today's Presenters

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# Most Frequent Liability Issues in Law Enforcement

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- Use of Force
- False Arrest
- Malicious Prosecution
- Illegal Search and Seizure
- First Amendment
- Strip search
- Deliberate Indifferent to Serious Medical Needs



Excited  
Delirium



# Who are our Officers Dealing With

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- Mentally ill
- Under the influence of drugs and alcohol
- Violent/aggressive individuals
- Joe Blow citizen
- Diverse populations
- At risk individuals



# Decision Making: To Detain or to Arrest

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- Why am I here?
- Severity of the crime
- Risk of harm to officer or others
- Probable cause
- Catch and release



# Textbook Traffic Stop

# Use of Force – 4<sup>th</sup> Amendment

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- Objective reasonableness
- BWC benefit
- Qualified Immunity
- Local ordinances
- Disturbing the peace
- Resisting and obstructing
- Impact of dismissals/FOIA





# Types of Searches in Jail

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- Pat down search
- Modified strip search
- Strip search
- Body cavity – medical prof only
- Shakedown searches of cells



# Strip Search - Jail

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- Strip searches - Common area for litigation
  - Who can be strip searched upon intake
  - Other strip searches
    - Court
    - Medical
  - Procedures



# Strip Searches – Local Lock Ups

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## MCL764.25a:

- Person arrested or detained for misdemeanor/civil fine shall not be strip searched unless both following occur:
  - Person arrested is being lodged in detention facility by court order or there is reasonable cause to believe that person is concealing weapon, controlled substance or evidence of crime.

# Michigan Strip Search Law

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## MCL764.25a:

- Written authorization from chief law enforcement officer



# Michigan Strip Search Law

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- Strip search under statute shall be by a person of same sex; in place that prevents observation; those assisting shall be same sex as person searched.
- Must prepare report documenting same, including justification for search.
- Violation of statute = misdemeanor

# Strip Searches

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- Strip search of male prisoner in presence of female officer did not violate prisoner's rights under Fourth or Eighth Amendments, despite fact that officer allegedly laughed at prisoner when he was naked.
- However, whenever possible, same sex searches, with privacy, are appropriate.
- ***Roden v Sowders***, 84 Fed. Appx. 611 (6th Cir 2003)

# *Florence v Burlington Co.*, U.S. Sup. Ct. 2012

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- Court upheld strip-search policy as reasonable and constitutional to maintain safety of institution even if only a misdemeanor charge.
- People detained for minor offenses can turn out to be the most devious and dangerous criminals
- Experience shows that people arrested for minor offenses have tried to smuggle prohibited items into jail, sometimes by using their rectal cavities or genitals for the concealment.

# Inmate Searches

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- Because of critically important government interest in maintaining security and discipline in a prison setting, as well as reduced privacy expectations of one who is lawfully incarcerated for violation of law, little Fourth Amendment protection applies to convicted inmates.





# Unreasonable Searches

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- Inmate has no reasonable expectation of privacy in his prison cell entitling him to protection of Fourth Amendment's proscription against unreasonable searches.
- ***Smith v Michigan***, 256 F Supp. 2d 704 (ED Mich 2003) (citing ***Hudson v Palmer***, 468 US 517, 526; 104 S. Ct. 3194; 82 L Ed. 2d 393 (1984))

# 'Shakedown' Searches

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- Searches of prisoners' persons also require no specific level of cause, and routine "shakedown" searches are permissible.
- *People v Oliver*, 63 Mich. App. 509; 234 NW.2d 679 (1975)



# Jail Deaths

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- Drug overdoses
- Deliberate indifference to a serious medical need
- Reliance on medical providers



# Deliberate Indifference to Serious Medical Needs – Pretrial Detainee

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- An objectively serious medical need
- Defendant must act recklessly in response to the need and the risk it posed to detainee.
- ***Grote v Kenton Co. et al***,  
85 F.4th 397 (6th Cir. 2023)



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# Deliberate Indifference to Medical Needs

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- Generally, “non-medically trained officer[s]” do not act with deliberate indifference to a detainee’s medical needs when they reasonably defer to a medical professional’s diagnosis or treatment.
- *McGaw v. Sevier County*, 715 F. App'x 495, 498 (6th Cir. 2017)

# Deliberate Indifference to Medical Needs

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- A mistaken, yet reasonable, belief that such deference to a provider is warranted will not rise to the level of deliberate indifference. *Id.*
- Such deference is unreasonable in circumstances when the officer is aware of additional information concerning an incarcerated person's condition, or if the medical professional rendered their opinion prior to changed circumstances.

# Substantive Due Process Clause

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- Pretrial detainees have same protection under substantive due process clause of Fourteenth Amendment, rather than Eighth Amendment.
- *Bell v Wolfish*, 441 US 520, 545; 99 S. Ct. 1861; 60 L Ed. 2d 447 (1979)

# Deliberate Indifference Elements

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- Prisoner must show that they had serious medical needs, and he/she must show that a defendant, being aware of that need, acted with deliberate indifference to it.
- *Proctor v Applegate*, 2009 WL 3208283; see also *Farmer v Brennan*, 511 US 825, 834; 114 S. Ct. 1970; 128 L Ed. 2d 811 (1994)



# Prison Reform Act

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- Prison Litigation Reform Act (PLRA) 42 U.S.C. § 1997e, provides that prisoner bringing action with respect to prison conditions under § 1983 must first exhaust available administrative remedies.
- *Porter v Nussle*,  
534 US 516, 122 S. Ct. 983,  
152 L Ed. 2d 12 (2002)



# Questions?

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