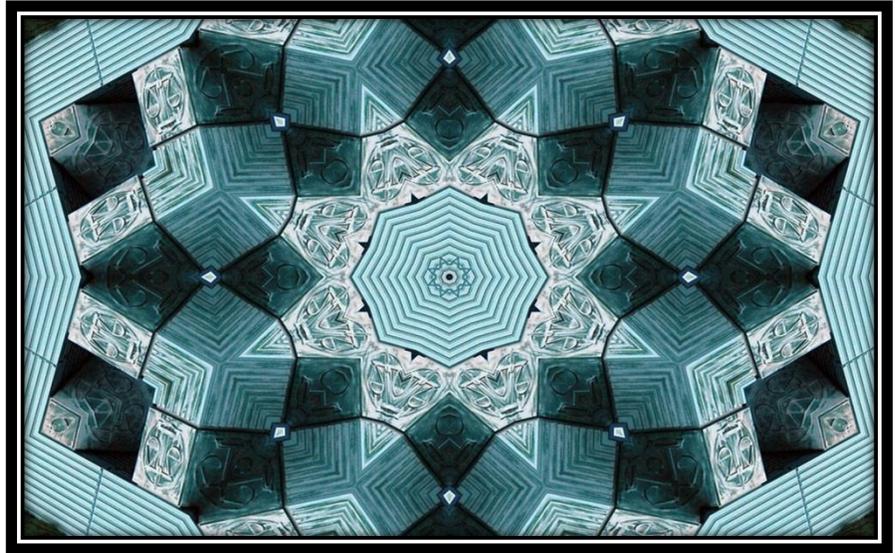


JUVENILE PROBATION | SUPERVISION OFFICER BASIC COURSE
Understanding Professional Liability



PARTICIPANT GUIDE

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UNDERSTANDING PROFESSIONAL LIABILITY

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INTRODUCTION

This course details the legal liabilities, consequences, and protections juvenile justice professionals may face.

PERFORMANCE OBJECTIVES

1. Summarize the common liability areas that may lead to undesired legal consequences.
2. Explain the differences between criminal, civil, and administrative consequences.
3. Outline the legal protections available to juvenile justice professionals.

NOTES

SECTION I: LEGAL LIABILITIES

Who's at Risk?

- Personal liability
- Bystander liability
 - know fellow officer is violating rights
 - have reasonable opportunity to prevent harm
 - choose not to act
- Vicarious liability
 - supervisors
 - specifically authorizes act
 - typically authorizes acts of same nature
 - knew of act but did nothing

LEGALLY LIABLE

Being responsible for your own acts or failures to act under the law.

- department | facility
- deep pockets theory

ACTIVITY: MATCH THE ACTION

Instructions: Match the appropriate cause of action with the correct scenario by placing a letter from the word box on the blank line next to a numbered scenario. Some causes of action are used more than once.

Causes of Action		
A Detention Hearing Status Offense Non-Offender	D Tampering with Government Record	G Prohibited Substances or Items in facility
B STIs AIDS HIV Results Disclosure	E Violation of Civil Rights	H Failure to Report
C Improper Sexual Relationship with Person in Custody or Supervision	F Permitting or Facilitating an Escape	

Scenarios

- ___ 1. You forgot to sign a case plan a month ago and sign it today with the date from a month ago.
- ___ 2. Discreetly giving a cell phone to a juvenile in detention.
- ___ 3. Not revealing a juvenile was assaulted by another juvenile in detention during your shift.
- ___ 4. Telling your neighbor a juvenile in detention is HIV positive.
- ___ 5. Recommending continued detention for a non-offender being held for deportation to keep her safe.
- ___ 6. Engaging in sexual activity with an 18-year-old juvenile while he is on a home pass.
- ___ 7. Punishing a group of juveniles' in a facility because of the actions of one.
- ___ 8. Overhearing a juvenile talk about escaping and not reporting it, even after she escaped the next day.

SECTION II: LEGAL CONSEQUENCES

Types of Proceedings

- Criminal
- Civil
- Disciplinary

Criminal Proceedings

- Prosecutor and defendant
- Prosecutor must prove beyond reasonable doubt
 - crime was committed
 - defendant committed crime
- Consequences
 - community service
 - criminal record/sex offender registration
 - fines, restitution, fees
 - jail or prison
 - probation
- Additional Consequences
 - public scrutiny and media
 - hardships
 - financial
 - family
 - employment

LEGAL PROCEEDINGS

Proceedings may occur when a person:

- violates a legal duty;
- commits an act; or
- does not perform an act that should have been performed.

CRIMINAL CONSEQUENCES

If convicted of a criminal offense, employees may receive disciplinary action up to and including termination.

Civil Proceedings

- Plaintiff and defendant
- Plaintiff must prove a preponderance of evidence
 - defendant had legal duty
 - defendant breached duty
 - defendant harmed plaintiff
 - breach was primary cause of harm
 - extent of damages
- Consequences
 - actual damages
 - punitive damages
 - additional fees

NEGLIGENCE

- Doing what a prudent person would not have done.
- Failure to do what a prudent person would have done.
- Failure to exercise the degree of care a prudent person would have.

ACTIVITY: BUT I DIDN'T DO ANYTHING!

Instructions: In a small group, read and discuss the scenarios, then answer the questions at the end of each scenario. Be prepared to discuss your responses in the large group.

Scenario 1

During the evening shift, a JSO staff doesn't show up for work. To remain in ratio, the detention supervisor decided he would supervise one of the mods. The detention supervisor has some paperwork to do and tells a newly certified JSO to manage the dorm and to call if he needed anything. An hour later, two juveniles begin to horseplay. Other juveniles push the JSO out of the way and form a standing circle around the two wrestling juveniles on the floor, blocking both the JSO and the camera's view. The other juveniles tell the JSO "it's nothing; we do this all the time." The JSO tells the two juveniles to stop, but they continue to wrestle. After 2 minutes, the JSO warns the juveniles he is about to radio for assistance and to "knock it off." The juveniles begin to scatter and the JSO sees one of the wrestlers is lying on the floor unconscious.

1. How did the JSO's behavior cause an injury? _____

2. What legal duty did the JSO have in this situation? _____

3. What consequences could the JSO potentially face? _____

4. What liability, if any, does the detention supervisor have in this situation? _____

Scenario 2

Michael, currently on probation, is highly disruptive and has had multiple incidents with several juveniles since beginning a new substance abuse class. The facilitators of the class have expressed their frustration with Michael's JPO and reported the other juveniles in the class do not care for him. A few days ago, Michael told the facilitator of the class he was having trouble with some of the other juveniles in the class that attend his school. The facilitator notifies Michael's JPO that there was history between Michael and some of the other participants in the class. The JPO asks the facilitator to remain patient and consistent with all juveniles in the class.

Before the class today, Michael's JPO received a phone call from Michael's counselor at e school and was told he had gotten into a verbal altercation with another student, who happens to be in the same substance abuse class. The JPO notices the juveniles present for the class all seem to be tense and short-tempered as she walks them back to the conference room where the group will be held. During the class, Michael refuses to participate and eventually gets into a verbal argument with two juveniles, one of them from the altercation earlier. Despite the facilitator telling them to calm down, the juveniles shove Michael to the floor and begin punching and kicking him. The JPO hears the commotion and runs to the conference room. The two juveniles tell the JPO, "You're welcome" and sit back down in their seats.

The JPO tells the juveniles, she will handle Michael next time and their behavior was inappropriate. Due to the commotion, the JPO ends the class early and leaves the office, figuring she will write an incident report the following day and will let Michael’s parents know what happened. The JPO did not report the incident to her supervisor, nor did she inform Michael’s parents of what happened.

The next morning, the JPO receives a call from Michael’s mother. She reported she noticed a large bump on Michael’s head and he began complaining of dizziness and a headache. She took Michael to the hospital, where he was admitted after collapsing.

1. How did the JCOs’ behavior cause an injury? _____

2. What duty did the JCOs have in this situation? _____

3. Why can the JCOs be sued in civil court? _____

Civil Rights Cases

- Federal court
- Violation of constitutional rights
- Seek damages or discontinuation of policies
- Official acting under color of law

COLOR OF LAW

When you claim to be conducting official duties on behalf of the department, all actions you make are considered acts under the “color of law.”

The Twist

- One case
 - guilty of crime
 - liable for breach
 - both

Disciplinary Proceedings

- Department, facility, or TJJD |employee
- Departmenty must prove a preponderance of evidence
 - behavior occurred as alleged
 - behavior is in violation of policy
- Disciplinary actions
 - warning
 - reprimand
 - loss of certification
- TJJD Disciplinary proceedings
 - Ineligible for certification
 - Code of ethics violation
 - Confirmed abuse, neglect, or exploitation

INVESTIGATIONS

- Identify small violations to avoid major violations
- Conduct thorough investigation every time to ensure juvenile safety
- All employees are expected to cooperate fully and truthfully
- Corroboration used to build cases
- Possible to discover additional violations

ACTIVITY: NOT JUST ONE

Instructions: After watching the video, answer the questions below.

1. How did the situation start? _____

2. Referring to the list of common liabilities, how did this youth worker fail to protect the juvenile? _____

3. What were some of the legal consequences mentioned? _____

4. What might be some other legal consequences not mentioned? _____

SECTION III: PROTECTIONS

Protections

- Good faith
- Scope of authority
- Qualified immunity
- Representation

Good Faith

- Acting in good faith when follow:
 - standard operating procedure;
 - order of superior or judge;
 - advice of legal counsel; or
 - statute or case law.

GOOD FAITH

Acting with the honest belief the action taken was appropriate under the circumstances.

Scope of Authority

- Duties noted in job description
- Duties of kind typically conducted by employees

Qualified Immunity

- Honest intentions
- Act as similarly trained employees would

Representation

- Office of Attorney General (AG) represents employees
 - following agency policy
 - acting within scope of authority
 - acting in good faith
 - who immediately notify AG
 - willing to cooperate in defense

- State pays damages
 - negligence
 - civil rights violations

STATE LIMITS

The state will *not* pay damages or represent employees whose acts were:

- Willful
- Result of serious negligence
- Made in bad faith
- Consciously indifferent
- A reckless disregard for rights of another person

Additional Protections

- Document all activities
- Follow rules, regulations, standards, and statutes
- Ask supervisor or seek legal advice
- Be aware of changes
- Participate in trainings
- Report all observed violations
- Avoid inappropriate conversations with juveniles
- No off-duty contact with juveniles
- Refrain from accepting or giving personal gifts or correspondence
- Use restraints in the proper way
- Remain professional at all times

NOTES

FINAL THOUGHTS

1. You are personally and legally responsible for your decisions.
2. Avoid unnecessary situations by being aware of common liabilities juvenile justice professionals often face.
3. Be mindful of the various protections available to you.