

RISK

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RISK MANAGEMENT
A U T H O R I T Y

Risk Management Trends; Managing through

TOM CREMONTE
MMRMA

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Introduction

What we will cover:

- Overview of MMRMA
- What risk consultants do
- Frequency of claims
- Severity of claims
- Current trends
- Future trends
- Jail literacy
- Observations
- Solutions



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Disclaimer

This is a perspective based on professional experience. Previous loss history(s) will be used to illustrate issues for discussion. Generalities will also be used when appropriate. Entities used in examples will not be identified.

This information is current and accurate, to the best of our knowledge, on the date(s) in which MMRMA presented this training. Recent changes in law, judicial rulings, and local considerations may necessitate modifications before you follow or relay upon this guidance. As always, you are encouraged to consult with your local legal advisor for specific legal advice prior to implementing this guidance.



MMRMA Risk Consultants: What we do for you!

- Provide guidance & recommendations
- Identify and provide relevant training
- Provide situational reassurance
- Forecasting/projections/grants



High Liability/Loss Leaders

Law Enforcement

- Excessive Force
- Civil Rights
- Employment Practices
- False Arrest
- Wrongful prosecution

Corrections

- **Deliberate Indifference**
- **Excessive Force**
- **Death and Injuries**
- **Civil Rights**

Employment Practices

- Discrimination
- Harassment
- Wrongful Termination

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Jail Literacy

MDOC Regulates Jails in all 83 Counties

- 6 no longer have corrections ops (Kalkaska, Oscoda, Montmorency, Alcona, Luce, Keweenaw)
- Authority over areas concerning health care, sanitation, food service, fire safety, staffing

Jail Designations

- 4 Metro
- 17 Urban
- Remainder are Rural



Jail Literacy

Areas of Concern and Liability:

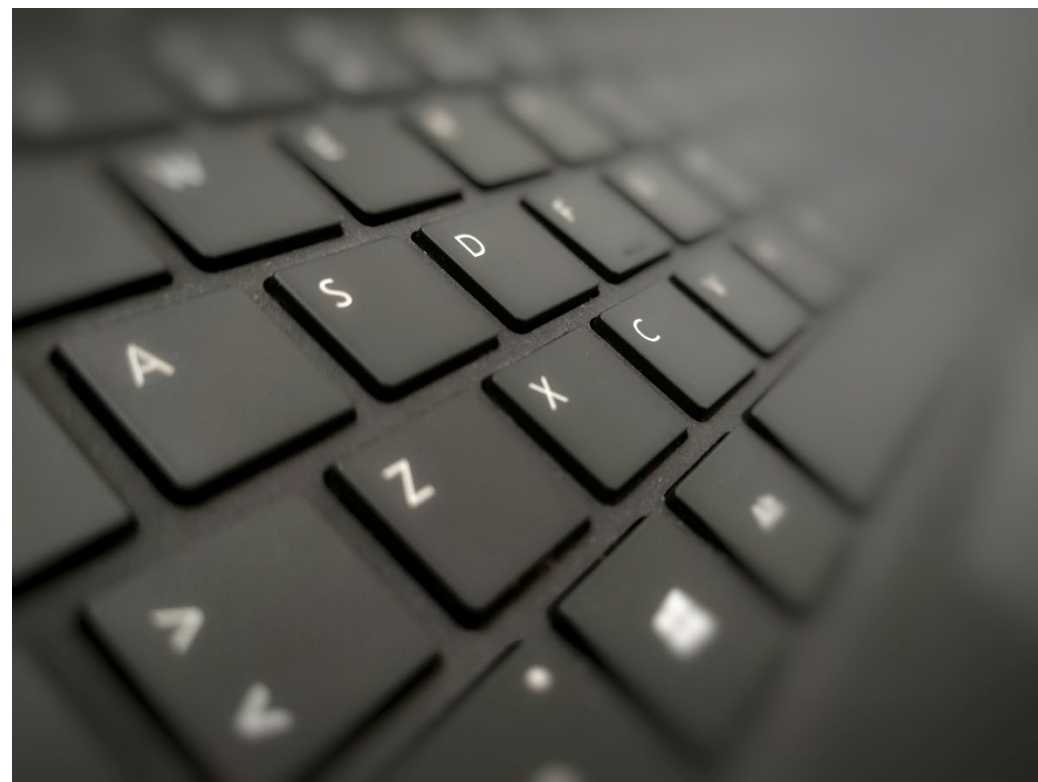
- Administration
- Physical plant
- Personnel
- Operational
- Programming



Contributing Factors to Loss/Liability In Corrections

Report Writing

- Incomplete, misleading, poorly written
- Submitted without supervisory review
- Poorly reviewed and/or not corrected
- Create exposure through omission or miswording



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Contributing Factors to Loss/Liability In Corrections



Classification

- Facility is unable to classify due to design
- Poor classification protocols
- Classification is not achievable due to overcrowding
- Subjective classification or vary from shift to shift
- No supervisory oversight
- Poor documentation

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Reality



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Contributing Factors to Loss/Liability In Corrections

Excessive Force Claims

- Use of Tasers
- Restraint Chairs
- OC Sprays
- Handcuffs
- Empty Hand Techniques



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Liability and Medical Care

Deliberate Indifference to Serious Medical Needs

- Withdrawal Symptoms
- Intoxication
- Suicidal Risk



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Deliberate Indifference To A Serious Medical Need

Deliberate indifference to an inmate's serious medical needs constitutes unnecessary and wanton infliction of pain.



The US Supreme Court has set up a two-part test for liability:

1. The official knows of and disregards an excessive risk to inmate health or safety;
or
2. The official was aware of facts from which an inference can be drawn and draw the inference.



Liability and Medical Care

Area of Concern – Assessment

- Intoxication
- Seizures
- Diabetes
- Delirium Tremens (DT's does not stand for detox)
- Inmate on detoxification protocol
- Other medical issues raised by the inmate
- **Discouragement to send inmates to hospitals**



Liability and Medical Care

Area of Concern - Medications:

- Poor policies of securing, packaging and disbursement of meds
- Medication packaging and distribution by non-medical staff
- Cost of non-generic drugs
- Psychotropics
- Aids, HIV, Hep-C drugs



Liability and Medical Care

Area of Concern – Staff, Contract, Training:

- Medical/Mental Health issues
- Use of LPN's
- Not adhering to the letter of the medical contract
- Medical staff working outside scope of licenses
- Jail Staff providing misleading information to medical staff
- Jail staff directing medical staff how to provide medical care



Liability and Medical Care

Area of concern – Jail Staff

- Not able to deliver medical care
- Acting as support for medical staff (BP, Pulse Ox, etc)
- Passing medications
- Inability to articulate complex medical observations
- Don't recognize Medical/Mental Health issues
- Staff not appropriately trained for complex med issues



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Liability and Medical Care

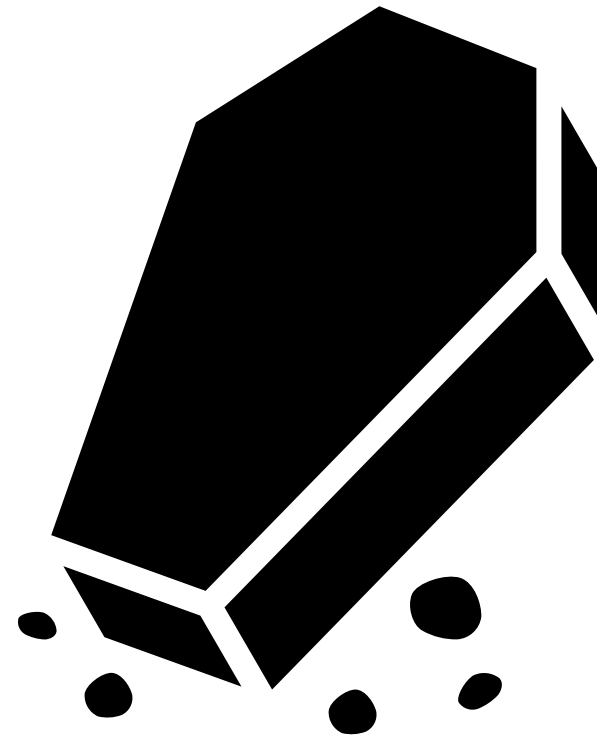
Area of concern – Additional Considerations:

- Level of care varies from site to site
- Medical acuity
- Drug and alcohol addiction
- Female population (pregnancies)
- Aging population
- Mental Health



Jail deaths

- **Suicide**
- **Overdose**
- **Medical Issues**
- **Homicide**



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Staffing



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Staffing

Supervision:

- Departments lack adequate and effective supervision
- Remote supervision/supervision by road staff
- Supervisors assigned to line duties
- Not trained on all aspects of their jobs
- Span of control
- Lack of clarity or authority on role of supervisors



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Employment Practices

Causation of employment liability and/or professional liability suits:

- Negligent Selection and/or Retention
- Failure to Train
- Failure to Supervise or Direct
- Negligent Assignment



Training



- Training inadequate in many areas
- Vary from department to department
- Training relevancy
- Evaluate training modules and trainers
- On-line training

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Contributors to Liability

- Juveniles
- MDOC policies/Keeping parole violators in county jails
- Duty to Intervene
- Michigan AG – Public Integrity Unit
- Inmate Transports
- Leasing beds



Contributors to Liability

Leasing Beds:

- Problematic for many understaffed or poorly maintained jails
- Exceeding operational capacity
- Staff not trained for clientele
- Rules overlooked to avoid conflict



Contributors to Liability

Transgender:

- Sixth Circuit recognizes Gender Identification Disorder (GID) and Gender Dysphoria (DG) as serious medical conditions.
- A blanket refusal to provide any treatment can constitute cruel and unusual punishment in violation of the Eighth Amendment.
- Ignoring these conditions can result in a finding of deliberate indifference.
- See, e.g., *Phillips v. MDOC*, 731 F. Supp. 792, 800 (W.D.Mich.1990), affirmed, 932 F.2d 969 (6th Cir.1991)



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Concerning Trends:

Michigan has seen its police force reduced by 17% since September 11, 2001 (reduced from 22,488 law enforcement officers in 2001 to 18,630 officers in 2017).

Michigan has the lowest ratio of law enforcement personnel to residents of any state in the Midwest, **despite** having the region's second highest violent crime rate.

In 2016, Michigan had only a 35% violent crime clearance rate compared with the national average of 46%, and only a 31% murder clearance rate compared to the national average of 55%.



MICHIGAN PRISONERS, VIOLENT CRIME, AND PUBLIC SAFETY: A PROSECUTOR'S REPORT

PAAM Corrections Committee

Prosecuting Attorneys
Association of Michigan

July 2018

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Concerning Trends Cont:

In 2016, **only 1 in 10 felons were sentenced to prison** at their initial sentencing, meaning that **90% (9 in 10 felons) served their sentence in jail and on probation.**

In exact numbers, in 2016 there were **42,616 new felons serving time in jail and on probation** (only 4,734 new felons went to prison).

Even after adding in probation and parole violators, Michigan sent only **23.8%** of convicted felons to prison.



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Challenges

May Lead to More Litigation....

- Prison Rape Elimination Act
- Unpredictability in the CJ system
- Pre-prepping - putting contraband in body cavities prior to coming to jail/consequence of new laws



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Challenges

May lead to more litigation ...

- Wrongful incarceration claims
- Lowering of employment standards/Expungement
- Waiting period for competency exams and treatment orders
- MDOC referrals for parole & probation holds
- Vulnerabilities in the courts and county buildings.



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Managing Through...

Good Communication:

- Courts, Sheriff's Office, County Administration
- Relationships with shareholders
- Jail Administrator should collaborate with county administration



Managing Through...

Use Best Practices:

- Understand industry best practices
- Be wary of low-bid providers
- Recognize need for off-site care/Use of EMR's



Moving Forward/Success

- Mental Health Treatment/ Better screening
- Medication Assisted Therapy
- Technology
- More training
- Resource Sharing/List-Serves



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What the future holds.....

- Regional jails
- Good Governance
- Good Management
- Good Policies
- Jail and pre-trial incarceration reforms (2021)



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Questions????

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