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**The Bill Blackwood
Law Enforcement Management Institute of Texas**

The Need for Policies Governing

Jail Procedures in the

Luling Police Department

**A Policy Research Project
Submitted in Partial Fulfillment
Of the Requirements for the Professional Designation
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ABSTRACT

This project is very important to the Luling Police Department because the department currently has no written guidelines or policies governing the jail or holding facility. The absence of a written policy presents a potential litigation hazard to the department and to the City of Luling.

The purpose of the project is to research the topics of jails, jail policies, and litigation with regard to jails, jail policies, and trends in litigation so that an informed recommendation may be returned to the department for consideration.

Methods used in the research included review of literature, review of independent research conducted outside the Luling Police Department, and interviews by telephone and in person of professionals with information pertinent to the research topic. A mail-out questionnaire was also utilized to gather information on other police agencies that operate jails and holding facilities.

The conclusions reached and recommendations include: 1) Litigation trends are on the increase; 2) Without a written policy governing the jail, Luling Police Department opens itself up to potential costly litigation; 3) Having a written policy in place substantially lessens the potential loss due to litigation; 4) The Luling Police Department would be wise to proactively author a written policy governing the jail or adopt a written policy currently in use by another police agency that could be tailored to fit the needs of the Luling Police Department.

RESERVE

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RESERVE

Introduction

Society today is a litigious society. Seldom does a week pass that there is not one or more news articles concerning lawsuits, especially litigation brought against police departments or other law enforcement entities. Lawsuits brought against law enforcement agencies make for eye-catching headlines; therefore these newsworthy events receive media interest from newspapers, magazines, and television - often receiving national media attention. The case law that comes about as a result of these lawsuits impacts not only the defendant agency, it often affects numerous other agencies and countless individual people. These impacts are often felt in the form of punitive fines, and higher operating costs due to higher insurance rates.

Currently, the Luling Police Department, a department of 14 officers providing police service to a city of about 6,000 citizens in south central Texas, has no policy or procedure manual in place to govern or provide guidance to the officers utilizing the holding facilities at that department.

The purpose of this research is to examine some potential problems that law enforcement agencies, specifically smaller police departments, can be faced with if they do not have policies in place governing their jails or holding areas and to examine what some departments have done to lessen liability concerning their jail or holding area operations. It is anticipated that with this information a comprehensive policy can be implemented for use by Luling Police officers to protect them, the Luling Police Department, and the City of Luling from liability issues, issues that could undermine the budget of the department,

injure the morale of the department and its officers, and possibly the pocketbook of the officers themselves.

Historical/Legal

When researching the subject of jails in Texas it is probably wise to start out with the definition of the term "jail". It was discovered during the process of the research that several terms were used. The term "jail" was most often used to describe a county jail or facility that housed inmates awaiting bond, trial, sentencing, or that were serving out a sentence of less than two years. The terms most often used to depict municipal jails were "municipal jail", "lockup", or "municipal holding facility". The lockup is generally used to hold prisoners awaiting arraignment, trial, or transfer to a county jail. This research discovered three sources for definitions. The first source was Del Carmen, who provided two definitions or descriptions for county jails. He explained that "County jails are used to: 1) detain offenders before trial if they cannot afford or are not eligible for bail, and 2) serve as institutions to house misdemeanor offenders sentenced to terms of less as well as some non-serious felons." The second: According to Holden, "the primary purpose of the local jail is custody; custody and security are the reasons for the existence of the local jail." Whereas, Kerle, in the third describes a lock up this way: "A lockup is a facility where the prisoner is held for a short period of time (usually from a few hours to seventy-two hours)." Since the Luling Police Department operates a municipal holding facility, or lockup, we will focus our research in this area.

The look into the historical evolution of the jail as it has evolved in Texas is in order. In early Texas history the concepts of confinement was accepted as proper if you transgressed against the law. "The concept of confinement was generally accepted as a proper means for punishing offenders by the time American pioneers began to settle in Texas. Historically, jails were established to house those involved in criminal acts." Many jails were housed in whatever buildings or structures were available at the time. In 1876 Article 5115 of the Vernon's Texas Civil Statutes provided for the operation of these jails, many of which had moved to buildings constructed especially for the purpose of housing prisoners. In 1975, the Texas Legislature passed a new law establishing a Commission on Jail Standards. "With the passage of this bill, the Texas Legislature created a nine-member commission charged with the responsibility of setting jail standards, inspecting jails, and requiring adherence to those standards." Thus, there came about a new professional era in the administration of jails in Texas.

In performing research in the area of lockups there was a notable lack of documented research into this field. Research also revealed some substantial gaps in the timeline of previously performed research by other people. The past 30 years hold previous research, most of which was in the area of state prisons and county jails, not in the area of lockups. One such notable time lapse lies between 1971 and 1989. This proved particularly constraining regarding litigation research. It was noted that litigation problems for jails seem to occur most often when there are no jail policies or procedures in place, or when the policies in place are not followed. Robert Grant stated it succinctly when he said, "Jails are nightmarish situations for departments who run a jail. They are problems simply waiting to happen." The trends in litigation are on the upswing. According to

Grant, "In 1962 there was one recorded \$1 million lawsuit won against cities. By 1982 there were 291 \$1 million lawsuits won against cities." Most lawsuits brought against cities generally cite 42 U.S.C. 1983, which has been interpreted by the Supreme Court to apply to municipalities when "deliberate indifference" has been shown and where there is shown a negligent training situation by the municipality. According to Grant, "Lawsuits are generally not aimed at individual officers; they are generally aimed at the parent departments and cities due to the deep pockets there." Traditional historical causes for litigation against police departments and cities seem to center around negligence. The historical causes for negligence include the following: Negligent appointment, negligent assignment, negligent training, negligent supervision, and negligent direction or control.

The Luling Police Department currently operates a lockup, or holding facility. The Department currently has no written policy governing the holding facility. As the Luling Police Department currently has no written policy or guideline in place to govern the holding facility there, it would appear that the Department and the city are in great potential liability from possible litigation regarding negligence.

Review of Literature or Practice

Most independent research by others that was found focused on either state prison systems or on county jail facilities. As indicated earlier in this paper, research reveals that there appears to be little independent research conducted by others on the topic of municipal police holding facilities. Some independent research on this topic was found. One such point of research revealed some interesting information. Jay Chase of the

Houston, Texas Police Department examined several germane topics in his study concerning the Houston Police Department jail in his A Report with Recommendations Concerning the Development of a Security Program Specifically Designed for Jail Personnel. In his research, Chase points out that municipal jails have an entirely different purpose than does a county jail, or a state or federal prison: "The primary purpose of the local, or municipal, jail is custody of a recently arrested suspect... the municipal jail does not usually have the time or the funds to effect any treatment on the individuals incarcerated." In his study Chase points out that Houston Police Department has a high percentage of drug or alcohol-related arrests. He goes on to point out the inherent problems that attend those persons arrested for public intoxication, such as altered states of awareness, lack of predictability, altered states of consciousness, belligerence, and illness that arrestees often suffer. Other independent researchers have apparently also discovered a high percentage of alcohol and drug abusers arrested and placed in municipal holding facilities. Allen Beck, United States Bureau of Justice states, "More than half of all jail inmates said they were under the influence of drugs or alcohol at the time of their current offense. 12% stated they were under the influence of both drugs and alcohol, 15.4% under the influence of only drugs and 29.2% under the influence of only alcohol." Beck goes on to point out that that would appear to be a logical step to assume that a failure of a department to train its personnel to handle these types of inmates, and the possible confrontations that could feasibly occur, could result in violations of the individual's Eighth Amendment rights, thus resulting in litigation.

A survey was conducted of some other police agencies in Texas with an eye towards discovering their policies and procedures. Surveys were conducted utilizing

telephone interviews, survey questionnaires mailed out to other agencies, as well as interviews conducted in person. Nineteen departments were polled by mail, in person, or by telephone. The agencies polled varied in size from small departments having 10-15 officers and two holding cells to larger agencies having over 200 officers and having over 25 cells. Of the departments polled, 16 departments responded to the questionnaire.

Some interesting comparisons were noted as well as some varying contrasts. Thirteen of the agencies polled utilize a county jail to house their prisoners. All of the county jails utilized by these departments have jail guidelines and policies in place. Thirteen of the sixteen agencies maintain their own holding facility, as does the Luling Police Department. Of those thirteen departments that operate their own facility, eleven have written guidelines or policies in place - the other two do not have written policies at this time but anticipate having a written guideline in place in the near future. Luling Police Department does not have a policy in place. 50% of the agencies responding to the poll confessed to having been the target of litigation - 80% of the lawsuits addressed points of negligence. Of the negligence torts, 50% charged inadequate supervision, with the other lawsuits generally charging inadequate medical or personal injury. Of the departments facing litigation, each having a written policy in place, all reported that the presence of, and adherence to, the written policy assisted them in the defense of their individual litigation. One such lawsuit (Butler v. City of Terrell, 1999) resulted when a prisoner committed suicide in his holding cell at Terrell Police Department in Terrell, Texas in 1989. The lawsuit charged individual officers, the police department, the Chief of Police, and the City of Terrell with negligence when Keith Butler strangled himself in his cell in September 1989. Fortunately for the officers listed, the department, the chief, and the city,

there was a written policy in place that had been followed by the staff on duty at the time of the incident. Conversely, Luling Police Department has not been the target of litigation with regards to its jail operation. The various departments polled all reported problems in conjunction to maintaining a jail or holding facility. Some of the problems included cleanliness of the holding area, maintenance of the facility, criminal mischief committed against the facility by inmates, self-injury to the inmates, overcrowding, plumbing problems, problems with pay phones, personnel having to leave their patrol functions to make jail checks, and unruly prisoners. Of these listed problems, Luling Police Department has experienced all of these in the last 18 months of operation at least once. The average age of the jail facilities in operation by municipal agencies is 11.3 years and all but one is an original part of the building where it is located - the other is an add-on addition to the building. The Luling Police Department's facility is approximately 20 years old and the original building was not intended to house a holding facility.

Discussion of Relevant Issues

In this section we will attempt to identify and summarize some of the key issues examined.

The research conducted on this topic uncovered the fact that there are still some municipal holding facilities that do not have written guidelines or policies in place. The numbers are diminishing, as departments become cognizant of the importance of having guidelines, in writing, in place to facilitate the operations of those facilities. However, there are still some agencies, even though most admit being aware of growing litigation

trends, which have not yet engineered a policy or adopted a policy concerning their lockups. A key point noted in the research was the notable failure of an agency to have a written policy or guideline in place could open a department and its parent city to costly litigation. Another important point, especially when administrators start counting their pennies, is that litigation regarding jails and their operation, both municipal and county, is on the rise. An incredibly significant issue that was identified was the simple fact that having a departmental policy or guideline in place and in writing can substantially assist department administrators and city government officials in defending against litigation.

Constraints began to become obvious as research on this topic progressed. Although there are many police agencies in operation today without formal, written guidelines there is an incredible opportunity. The opportunity here lies with administrators or police supervision officials to bridge the gap by designing contemporary guidelines and written policies so that their departments can remain on top of the litigation trend. In an article found in Justice Quarterly it was noted, "At its most fundamental level, the problems of substandard confinement practices reflect a situation where the resources devoted to correctional supervision have failed to keep pace with policies that have dictated expanded reliance on the use of imprisonment." There are few departments or cities that can easily afford a lawsuit, as many of them have discovered the hard way. Two out of the thirteen responding agencies in a jail questionnaire state that they had no policies in place to govern their jail operation. Victor Cizanckas relates, "The criminal justice system - and the police in particular - is being scrutinized by the informed and the uninformed, rich and poor, the undereducated and the intellectual, the political activist and the disenfranchised." Al Alcorn, a retired Lieutenant for the Fort Worth, Texas Police

Department and a jail administrator for approximately ten years noted in a recent interview, "It isn't a matter of whether or not a police department will be the target of civil litigation - it's a matter of when." Carl Haidle, a Potter County Sheriff's Office (Amarillo, Texas) jail administrator for 15 years postulated in a personal interview, "It is ludicrous to believe that even though the city has not been sued with regards to its jail that that luck can continue." Luling Police Department Chief of Police Paul D. Lilly admitted in an interview, "The absence of jail policies or guidelines in place opens the department up to possible civil tort." The opportunity lies in the proactive stance of the individual agencies. It cannot afford to wait until a problem arises then expect to deal with it in a positive fashion. David Carruthers, a Senior Deputy and Investigator with the United States Marshal's Service in Fort Worth, Texas, and a specialist in the field of prisoner protection and transportation, offered in a personal interview, "It would behoove any agency to have written guidelines that officers can follow. The absence of a policy in writing could devastate a small agency or city if faced with a lawsuit - an almost certainty in today's society." Robert Grant, a respected lecturer in the field of criminal justice, notes, "Civil liability cases are up 29% with 60,000 lawsuits filed this year across the nation."

As previously noted, lawsuits are on the rise nationwide, as are the aggregate amounts being awarded by courts. According to E. Benline, Attorney at Law, in a personal interview, "It is not unusual in this day and age for a client to seek \$1 million in a civil liability case." In a personal interview, Chief Paul Lilly responded, "In the case of *Butler v. City of Terrell* the plaintiff was seeking in excess of \$2 million." Putting a written policy in place can be done by personnel already on the payroll with no additional cost of hiring policy writers, or by adopting a policy already in use by another department that

meets the needs of the department making the adoption. This cost is usually minimal due to the existence of many departmental policies copied onto computer floppy disks or with the implementation of a computer document scanner. Both computers and document scanners are commonly in use at many departments, and both are available at the Luling Police Department. According to T. D. Simpson, a computer specialist and Information Systems Specialist with the Dallas County Hospital District in Dallas, Texas, in a personal interview, "If the department does not have a computer or document scanner, the cost of a nominal computer system for a small office can run in the range from \$1,500 to \$2,500, depending upon equipment purchased." Add, if you will, the cost of training the department's officers regarding the adopted or new policy. Figuring an average two hours at rate of \$11.00 per hour and 20 personnel, the cost comes into the range of \$440.00. Add possibly \$2,500 for the computer equipment to write, record, or transcribe the policy. Figure in \$200.00 for payroll to the computer operator or clerk. The approximate total cost to write or transcribe a policy to protect the department from civil liability lawsuits would come out to about \$4,140.00 using the figures as given - an insurance policy to protect the city and the department against a potential \$1 million lawsuit. Using the previous figures, a potential cost savings to the police department or city of approximately \$995,860.00.

Conclusions/Recommendations

The purpose of the research was to examine the potential problems that law enforcement agencies, especially smaller municipal departments, and specifically the Luling Police Department, could be faced with if they do not have written policies or

procedures in place. Specific concerns were problems faced with municipal jails, holding facilities, or lockups. The purpose of the research was also to examine what other agencies have done to lessen liability concerns regarding their municipal jails, holding areas, or lockups.

It was anticipated that with this information a comprehensive policy could be implemented for the Luling Police Department to protect the police officers, the policed department itself, and the City of Luling from possible future litigation.

The relevancy and applicability is clear. It has been manifestly stated that today's society is indeed a litigious society, a society in which it is almost encouraged to sue. This has been obviously demonstrated by the number of lawsuits that are on the increase. It has also been clearly established that police officer, senior police officials, and their parent agencies are prime targets for litigation. Successful litigation against police officers, police departments, and cities often result in punitive fines and awards, thus creating higher operating costs for police departments and cities, not to mention potential economic debilitation of individual officers and their families. The research acknowledges that Luling Police Department has no written policy or procedure manual currently in place to govern its holding facility operation and to guide its police officers or staff on lockup procedures.

Luling Police Department, although it has not been the target of civil litigation concerning its holding facility to date, could easily become a target of expensive litigation in the future. Luling Police Department, its officers, and the City of Luling are at risk due to the absence of a written policy governing the agency's holding facility.

The results of this research require that the recommendation be that Luling Police Department adopt or create a written policy regarding the holding facility.

Recommendations will be made to the Office of the Chief of Police, Luling Police Department, to either author a set of guidelines and policies or adopt and tailor the guidelines and policies of another police department whose guidelines are found to match the needs of the Luling Police Department. The recommendation will include litigation trend figures, potential cost of litigation, other department practices, and the relative low cost of proactive policy development.

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RESERVE

Name:
Dept:

Appendix A

Jail Questionnaire (in partial fulfillment of LEMIT GMI course)

1. Does your department maintain its own jail/detention facility? **Yes** **No**
2. How old is this facility? _____
3. Is the facility an original part of the building or is it an "add on"? _____
4. Does your department have a policy(ies) governing your jail/detention? **Yes** **No**
(If possible, would you please provide a copy of the policy?)
- 4a. If your department does not have a current policy governing the jail/detention facility, does your department plan on implementing one in the next 12 months?
N/A **Yes** **No**
5. To your knowledge, has your department ever been the target of litigation regarding jail/detention facility procedures? **Yes** **No**
6. If possible, and if you can do so without legal repercussions, please explain the nature of the complaint and the results of the action.

7. Does your current jail/detention facility utilize certified jailers? **Yes** **No**
8. Do your police officers do their own book-in procedure? **Yes** **No**
9. What is the most severe problem your department has experienced with its jail/detention facility?

10. What is the most recurring problem your department's jail facility experiences?

11. Has the existence of a jail policy minimized or eliminated these problems? **Yes** **No**
12. If your department does not currently have a policy, do you believe that the adoption of a jail policy would assist in minimizing these problems? **Yes** **No**

Thank you for your time in answering this questionnaire!

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