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BASIC COURSE INSTRUCTOR UNIT GUIDE

31

CUSTODY

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**THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING**

STATE OF CALIFORNIA

The curriculum contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

UNIT GUIDE 31

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CURRICULUM

I. INTRODUCTION TO CUSTODY

A. What is custody?

1. By definition, custody means "immediate care or charge". In the context of this domain, custody refers to the immediate care or charge of **an arrested person**.
2. As addressed in this unit guide, custody refers to the responsibilities of patrol officers pertaining to the care and custody of arrestees from the time of arrest until the person is booked into a local detention facility.
3. Care and custody of arrestees after booking becomes the responsibility of **custodial personnel** (e.g., a deputy sheriff assigned to a jail facility, a local correctional officer, etc.). After booking, the arrested person is generally referred to as an **inmate**.

B. General responsibilities of a patrol officer in a custody situation:

1. Assuring there is a lawful basis for custody
2. Maintaining care, custody and safety of the arrested person until the person is booked into a local detention facility
3. Protecting the statutory and Constitutional rights of the arrested person while they are in the officer's charge
4. Handling those responsibilities necessary to facilitate the booking process
5. Maintaining officer and public safety

C. Constitutional protections

NOTE: Persons under arrest retain a variety of Constitutional rights which cannot be infringed upon by peace officers. Ensuring the protection of many of these rights will generally be the responsibility of custodial personnel after a person is incarcerated.

1. Although a prisoner gives up the right of freedom of movement, certain other rights are not restricted.
2. Constitutional rights a person retains in custody include:
 - a. Right to free speech
 - b. Right to a quick and speedy trial
 - c. Right to reasonable bail
 - d. Freedom of religion

D. Statutory protections

NOTE: Several of the following statutory rights/protections are discussed in detail in individual subsections of this Instructor Unit Guide.

Statutory rights/protections accorded to arrested persons include, but are not limited to:

1. Penal Code Section 2601 (Statutory rights of prisoners in custody). This section also includes provisions that statutory right of prisoners may be removed for cause following due process procedures. (Wilson vs. Superior Court 21 Cal 3d 816)
2. Penal Code Section 4027 - protection of religious freedom
3. Penal Code Section 851.5 - right to make phone calls
4. Penal Code Section 825 - right to consult legal counsel
5. Penal Code Section 147 - protection against inhumane treatment
6. Penal Code Section 149 - protection against assaults under color of authority
7. Penal Code Section 825.5 - right to a physician

E. Criminal and civil liability considerations

1. Peace officers who have custody of arrested persons are liable for the safekeeping of those persons under the provisions of state and federal laws
2. Failure to maintain the safety of arrested persons exposes individual officers and their agencies to civil liability
3. A peace officer who shows "callous disregard" for an arrested person's safety can be subjected to
 - a. departmental discipline (up to and including termination)
 - b. State criminal prosecution (e.g., for violation of California Penal statutes)
 - c. Federal criminal prosecution (e.g., for violation of Federal Civil Rights law)
 - d. civil lawsuit (which may include punitive damages levied directly against individual peace officers)

F. Officer safety considerations

NOTE: Custody of arrested persons inherently exposes an officer to a variety of hazards. It is often desirable to incorporate examples of case studies, videos, news clippings or other sources of information relating to assaults and killings of peace officers who were engaged in custodial responsibilities. Instructors may wish to include pertinent statistics and trends in their lesson plans.

1. Sources of information on assaults and killings of peace officers:

- a. FBI peace officer killing statistics (national figures)
- b. POST peace officer killing studies (California figures)
 - (1) 1980-1986 POST Peace Officer Killing Study
 - (2) 1987-1989 POST Peace Officer Killing Study
 - (3) *Guidelines for Law Enforcement Officer Safety* (published by POST following completion of the 1980-1986 POST study of California peace officers killed in the line of duty)

NOTE: Copies of these studies are available by contacting the POST Media Distribution Desk. A study addressing 1990-1993 statistics is currently in progress.

- c. POST telecourse and associated student workbook - *Surviving Deadly Assaults* - July 1993

NOTE: Copies of the telecourse video and workbook are available by contacting POST Training Program Services Bureau.

- d. Other sources of officer safety-related statistics and information include but not limited to the
 - (1) Board of Corrections
 - (2) Bureau of Prisons
 - (3) California Department of Justice (DOJ)

2. The ten fatal errors

NOTE: Although patterns and trends in assaults and killings of officers may change, one or more of the following errors are always present in the assault or killing of an officer. Many of these are directly applicable to custodial duties.

- 1. Attitude
 - a. If peace officers fail to keep their minds on their jobs while engaged in custodial responsibilities, or carry home problems into the workplace, they often start to make errors.
 - b. The resultant errors can place officers and their peers at risk.
- 2. Tombstone courage
- 3. Not enough rest
- 4. Taking a bad position
- 5. Danger signs ignored

6. Failure to watch hands of suspects/arrested persons
7. Relaxing too soon (an officer must not become complacent. The "rut" created by repeated uneventful custody situations, for example, can tempt an officer into becoming careless.)
8. Improper use or no handcuffs
9. No search or poor search
10. Dirty or inoperative weapon

NOTE: A one-page handout listing these ten fatal errors is included in the reference section of Instructor Unit Guide #23 - Crimes in Progress.

II. LEGALITY OF COMMITMENT TO CUSTODY

- A. Before an arrestee can be accepted by a local detention facility, the officer maintaining custody of the person must ensure that the commitment to custody is legal.
1. During the initial booking procedure the receiving officer at the local detention facility is obligated to verify that the commitment is legal and proper.
 2. This verification will usually be in the form of a signed commitment document (or legally acceptable abstract) presented by the delivering peace officer.

NOTE: Officers must make themselves aware of the standard documents utilized by their respective judicial systems

- B. There are four basic circumstances when a commitment to custody is legal:
1. Existence of a valid court commitment document
 2. Existence of a valid parole or probation commitment
 3. A probable cause arrest
 4. An enroute prisoner commitment

C. Court commitment documents

1. These may include, but are not limited to:
 - a. Arrest warrants
 - b. Sentence orders
 - c. Remanding orders
2. These documents generally direct a particular person to be confined. To be legally sufficient they must contain:
 - a. The signature of the magistrate or court clerk ("signature of authority")
 - b. Court case number/docket number
 - c. Violation
 - d. Bail or sentencing information
3. For a warrant arrest to be valid, the following conditions must exist:
 - a. The officer making the arrest is in possession of the original valid warrant, or
 - b. The existence of a valid warrant has been confirmed by the jurisdiction holding the warrant, and

- c. The officer making the arrest is in possession of a legally sufficient abstract of the warrant.

D. Parole or probation commitments

1. These are documents presented by a parole or probation officer directing confinement of a person in their charge.
2. These may also be referred to as parole holds, parole detainers or violations of probation.
3. The related statutes are:
 - a. Penal Code Section 3056 (Revocation of Parole)
 - b. Penal Code Section 1215 (Violation of Probation)
 - c. Welfare and Institutions Code 3151 (Certification for Release)
 - d. Penal Code Section 1203.2 (Sentencing Probationer committed for another offense)
 - e. Welfare and Institutions Code 1767.3 (Revocation of Juvenile Parole)

E. Probable cause arrests

1. When a person is booked into a local detention facility in response to a probable cause arrest, the person must be accompanied by the appropriate arrest report or initial booking sheet.
2. At a minimum, the arrest report or initial booking sheet must identify the person to be held and the violation (Penal Code Section 836).

F. Enroute prisoner commitments

1. Generally a patrol officer will not handle enroute prisoner bookings.
2. These occur when prisoners are held in temporary custody while in transit from one facility or agency to another.
3. Documents related to enroute prisoner commitments come in many different forms.
4. Upon presentation of a legal enroute prisoner commitment document, a local detention facility can accept a person for temporary confinement.

III. LAWS GOVERNING HUMANE TREATMENT OF ARRESTED PERSONS

- A. Under prevailing state law, prisoners are specifically accorded protection from inhumane treatment or oppression while in custody.
- B. Penal Code Section 147 states "Any officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or under his custody, is punishable by a fine not exceeding four thousand dollars (\$4,000), and by removal from office"
- C. Elements
 - 1. Any officer
 - 2. who willfully
 - 3. inhumanely treats or oppresses
 - 4. any prisoner under his (or her) care or custody
- D. Crime Classification: Infraction
- E. Ethical considerations
 - 1. Peace officers are legally and ethically obligated to treat prisoners in a humane and professional fashion.
 - 2. Persons in custody may be forceful, combative or violent. This can create management problems within a local detention facility and prompt the need for specific measures to protect custodial personnel and other prisoners (e.g., segregation of prisoners).
 - 3. Any steps taken to manage persons in custody must be consistent with the letter and the spirit of this law.

NOTE: Although this section addresses the specific violation of California Penal Code Section 147, inhumane treatment of persons in custody could also constitute a violation of Federal Civil Rights Laws.

IV. LAWS PERTAINING TO ASSAULTS AND PUNISHMENT OF PRISONERS

- A. Under prevailing law, any person is specifically accorded protection against assaults by public officers. In addition, law enforcement is specifically prohibited from applying cruel or unusual punishment to a person in custody.
- B. Assaults by public officers
 - 1. Penal Code Section 149 states "every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment".
 - 2. Elements
 - a. Public officer
 - b. Under color of authority
 - c. Without lawful necessity
 - d. Assaults or beats
 - e. Any person
 - 3. Crime Classification: Felony
- C. Cruel or unusual punishment
 - 1. Penal Code Section 673 states: "It shall be unlawful to use in the reformatories, institutions, jails, state hospitals, or any other state, county, or city institution, any cruel, corporal, or unusual punishment, or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined: and punishment by the use of straight jacket, gag, thumbscrew, shower bath, or the trussing up of a prisoner, inmate, or person confined is hereby prohibited. Any person who violates the provisions of this section or who aids, abets, or attempts in any way to contribute to the violation of this section shall be guilty of a misdemeanor".
 - 2. Elements
 - a. In a described location (i.e. a jail)
 - b. inflicts cruel, corporal, or unusual punishment (including certain specified acts, devices or lack of care)
 - c. upon a prisoner, inmate, or person confined
 - 3. Crime classification: Misdemeanor
 - 4. Related Sections:

a. Penal Code Section 2652.5 - Choke Chain Forbidden

- D. Custodial personnel are responsible for prisoners after accepting them from transporting or arresting officers.

NOTE: Although this section addresses the specific violation of California Penal Code Sections 149 and 673, assaults or cruel and unusual punishment of persons in custody could also constitute a violation of Federal Civil Rights Laws.

E. Ethical considerations

1. Peace officers are legally and ethically obligated to treat prisoners in a humane and professional fashion.
2. Persons in custody may be forceful, combative or violent. This can create management problems within a local detention facility and prompt the need for specific measures to protect custodial personnel and other prisoners (e.g., segregation of prisoners).
3. Any steps taken to manage persons in custody must be consistent with the letter and the spirit of this law.

V. WEAPONS CONTROL WITHIN LOCAL DETENTION FACILITIES

A. Prevailing law specifically limits bringing weapons into a local detention facility absent specific exceptions. As a result patrol officers must be conversant with

1. the circumstances under which weapons may be lawfully brought into a local detention facility, and
2. acceptable practices for securing weapons.

B. Weapons in custodial institutions and settings (Penal Code Section 4574(a):

1. Penal Code Section 4574(a) states: "Except when otherwise authorized by law, or when authorized by the person in charge of the prison or other institution referred to in this section or by any officer of the institution empowered by the person in charge of the institution to give such authorization, any person, who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison or prison road camp or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, or any jail or any county road camp in this state, or within the grounds belonging or adjacent to any such institution, any firearms, deadly weapons, or explosives, and any person who, while lawfully confined in a jail or county road camp possesses therein any firearm, deadly weapon, explosive, teargas or teargas weapon, is guilty of a felony and punishable by imprisonment in the state prison for two, three, or four years."

2. Elements

- a. Any person
- b. In a specified location (e.g., a jail)
- c. Without permission
- d. Knowingly
- e. Possesses, brings into, sends into, or assists in bringing or sending into
- f. A firearm, deadly weapon, explosive, teargas or teargas weapon

3. Crime Classification: Felony

C. Weapon control in or about local detention facilities

NOTE: Specific procedures for securing weapons in or about local detention facilities are generally addressed by individual agency policies.

1. With limited exceptions, peace officers are prohibited from bringing weapons into local detention facilities. As a result, weapons will commonly have to be secured outside the facility.

2. Considerations for securing weapons
 - a. In most cases, peace officers will secure duty firearms in specially designed firearms lockers located at or near the entrance of a local detention facility.
 - b. Along with their duty firearm, officers will need to secure other deadly weapons (e.g., back-up weapons, buck knives, etc.)
 - c. Some detention facilities also prohibit the officer from bringing in any ammunition, personal chemical agent device, baton, etc.
3. Officers should check the policy of local detention facility to ensure proper procedure before entering.

VI. OFFICERS RESPONSIBILITIES DURING INTAKE

A. Receipt for property taken from prisoner (Penal Code Section 4003)

1. In most instances the jail booking officer will take the arrested person's personal property and provide a receipt to the arrested person.
2. In those cases where the arresting officer takes possession of an arrested person's property, excluding evidence or contraband, the arresting officer will be required to provide or ensure that a receipt be provided to the arrested person.
3. Responsibility to provide a receipt (Penal Code Section 4003) "Whenever any weapon or other personal property is taken from an arrested person, it shall be the duty of the desk clerk or other proper officer of any city, county, or city and county jail, to which such person is committed for detention, to give a receipt to such person without delay for the property taken."

B. Proper description of seized property

1. When property is taken from an arrested person, the officer taking the property must describe the property on the booking sheet under "property taken."
2. The property description should be generic to prevent inaccuracies with value.

EXAMPLE: If a ring looks "gold" and contains what appears to be "diamonds," unless the officer describing the ring is a gemologist, the description should be "yellow in color with white-type stones."

C. Soliciting an attorney

1. There may be occasions when the arresting officer is asked by the arrested person to recommend an attorney. Most local detention facilities have referral numbers posted near the telephones.
2. The arresting officer should refrain from making recommendations because it may be a violation of the Business and Professions law.
3. Peace officers are prohibited from soliciting an attorney for a prisoner. (Business and Professions Code Section 6152)
 - a. It is illegal for a peace officer, to "solicit" in behalf of an attorney.
 - b. This activity is called a "runner" or "capper."
4. Punishment and crime classification of soliciting an attorney. (Business and Professions Code Section 6153)
 - a. A person who violates this section is guilty of a misdemeanor, and may be imprisoned in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or both;

- b. An officer who is found guilty of this section shall forfeit the right to his office and employment in addition to any other penalty.

VII. MEDICAL PRESCREENING OF ARRESTED PERSONS

- A. It is the responsibility of every officer to ensure the care, protection and safety of every person in custody or under arrest
- B. After taking custody of a person, the arresting officer should always look for signs of injury, mental illness, overdose, incapacitation, and whether the person requires medication.
- C. When transporting the person to a local detention facility, the following are considerations in the booking of an arrested person.

- 1. The arresting officer should document any observable, known or recognized signs of injury, illness, possible drug overdose, mental incapacitation or whether the person requires medication.

NOTE: This information is most often noted on the pre-booking sheets issued to officers or discovered in response to questions asked by the booking officer

- a. If the arresting officer believes that the arrested person requires urgent medical attention, (e.g., diabetic shock, head injury, bleeding, drug overdose) the officer should immediately arrange for the transportation of the person to an agency-approved medical facility.
- b. Once a medical release form is obtained from the agency-approved medical practitioner, the arrested person should be taken to the local detention facility.
- 2. Custodial personnel are required to complete a medical questionnaire on each arrested person brought into a local detention facility.
 - a. If not cleared by the facility's medical staff, the arrested person remains the responsibility of the arresting/transporting officer. That officer may be required to transport the arrested person to an agency-approved medical facility for clearance.
 - b. If an arrested person is cleared by the facility's medical staff, custodial personnel will accept responsibility for the care and custody of the arrested person and will proceed with the booking process. The arresting/transporting officer is then relieved of the responsibility for the care and custody of the arrested person.
- 3. In some instances an arrested person may require extended hospitalization (e.g., traffic accident, head injury, shooting, drug overdose).

NOTE: Instructors may wish to discuss common differences among agencies relating to the processing of arrested persons who require extended hospitalization. (e.g., cite and release, booking in absentia, booking into a hospital jail ward, etc.)

- D. Ethical considerations

It is often difficult to determine if a person's complaint of illness or injury is in fact bona fide, however, peace officers have an ethical responsibility to ensure that sick or injured persons receive appropriate medical attention.

VIII. ARRESTEES WHO MAY REQUIRE SPECIAL CARE, CLASSIFICATION OR PROTECTION

- A. Often the arresting officer has knowledge that the arrested person may require special care, classification or protection.
1. "Classification" refers to a basic evaluation of inmates to identify permanent housing requirements. It is based upon criminal sophistication, seriousness of crime, assaultive behavior, age, and/or other considerations which provide for the safety of staff and prisoners.
 2. These persons include:
 - a. Certain substance abusers (e.g. detoxing)
 - b. Suicide risks
 - c. Persons with mental disorders
 - d. Persons with developmental disabilities
 - e. Sick and/or injured persons
 - f. Certain sex offenders (e.g., child molester)
 - g. Escape risks
 - h. Civil contempt prisoners
 - i. Homosexual prisoners
 - j. Known gang members
 - k. Other persons needing protective custody (e.g., police informants, diplomats, arrested law enforcement officers)
 - l. High profile cases (e.g. child murderer)

NOTE: Detailed information concerning the detention of juveniles is addressed in Instructor Unit Guide #11-Juvenile Law and Procedure.

- B. Communicating this information to custodial personnel is extremely important in ensuring appropriate care, safety and security for the inmate and institution.
- C. Anything which may lead the arresting officer to believe the arrested person may be a suicide risk, either by statements or actions, should be communicated to custodial personnel immediately.

NOTE: Most jail suicides occur within the first 24 hours of incarceration

- D. Considerations for special care, classification and protection of specific persons

1. Substance abusers

a. The alcoholic

(1) Watch for delirium tremens; symptoms of acute alcoholism are:

- (a) Severe tremors
- (b) Hallucinations
- (c) Disorientation
- (d) Convulsions
- (e) Blackouts

(2) Watch for injuries or ailments hidden by effects of alcohol.

- (a) Diabetes
- (b) Multiple sclerosis
- (c) Head injuries

b. Narcotics/drug user

- (1) May have special medical and psychological problems at time of booking.
- (2) May be security problem within facility.

2. Persons with mental disorders

- a. Patience and understanding should be exercised when dealing with a person suspected of having a mental disorder
- b. A person with a mental disorder may have difficulty understanding simple instructions, following orders or remembering rules

NOTE: Detailed information for handling persons with mental disorders is contained in Instructor Unit Guide #37-Persons with Disabilities.

3. Persons with physical or developmental disabilities

- a. Patience and understanding should be exercised when dealing with a person suspected of having a physical or developmental disability
- b. A person with a physical or developmental disability may be unable to comply with instructions or may require special assistance to comply

NOTE: Detailed information for handling persons with physical and developmental disabilities is contained in Instructor Unit Guide #37-Persons with Disabilities.

4. Certain sex offenders (e.g., child molester)
 - a. May be assaulted by other inmates
 - b. May be a security problem
5. Escape risks/assaultive inmates
 - a. May have a prior history of escape attempts or have successfully escaped
 - b. May be potentially violent against custodial personnel and/or other inmates
 - c. May have history of violence against law enforcement personnel
6. Civil contempt prisoners
 - a. These prisoners must be housed separately from criminal prisoners
 - b. Authority under Penal Code Section 4001

NOTE: Waivers may be obtained to place the inmate into general population.

7. Known gang members
 - a. The custodial personnel should be informed by the arresting or transporting officer of any known or suspected gang affiliation. This type of information also helps to update gang intelligence files
 - b. Some high profile gang members may need to be isolated from the general population
 - c. May be a potential security problem depending on the type of gang and the gang member's involvement
 - d. Some gang members may need protective custody because of "contracts" on their life

NOTE: Detailed information relating to gang activity can be found in Instructor Unit Guide #38 - Gangs.

8. Other persons needing protective custody
 - a. Because of the general jail population ethic, the following types of prisoners will need protective custody.
 - (1) Homosexual prisoners
 - (2) Transsexual prisoners
 - (3) Transvestite prisoners
 - (4) Police informants

- (5) Law enforcement officers
- (6) High profile cases (e.g., celebrities, serial rapists/murderers, etc.)
- (7) Diplomats
- (8) Youthful-appearing offenders
- (9) Child exploiters, child pornographer, etc.

b. May have difficulty with the general population and may be victimized

IX. PHYSICAL SEARCHES OF ARRESTED PERSONS

A. Types of searches

1. A **physical search (frisk/patdown/clothing/metal detector search)** is a search that is less intrusive than a strip search and more thorough than a typical patdown search for weapons.
2. A **strip search** is a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks or genitalia of such person.
3. A **visual body cavity search** is a visual inspection of a body cavity. **Body cavity** means the stomach, rectal cavity, or vagina (includes body searches, strip searches, body cavity searches).
4. A **physical body cavity search** is a physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity.

B. Legal requirements for conducting physical, visual, strip and body cavity searches of misdemeanor suspects

1. Penal Code Section 4030 permits the following types of searches of misdemeanor arrestees prior to placing the person in a booking cell:
 - a. Patdown searches
 - b. Metal detector searches
 - c. Thorough clothing searches for concealed weapons and controlled substances
2. Penal Code Section 4030 prohibits
 - a. strip searches of prearrestment misdemeanor or infraction arrestees and minors detained prior to a detention hearing unless,
 - b. these persons are arrested on charges involving weapons, controlled substances, or violence.
3. Circumstances and conditions which must be present before a strip search of a misdemeanor suspect can be conducted:
 - a. The person has been arrested on charges involving weapons, controlled substances or violence; and
 - b. There is reasonable suspicion to believe the person is concealing a weapon or contraband; and
 - c. The search has been authorized in writing by the supervising officer; or

- d. The person to be searched has been given at least three hours to secure a release, has failed to do so, and is to be placed in the general jail population.
 - e. Any strip search must be conducted in an area of privacy by a person of the same sex.
4. More intrusive searches (i.e., visual body cavity and physical body cavity searches)
- a. Visual body cavity searches and physical body cavity searches may be performed only under more restrictive conditions than a strip search.
 - b. Physical body cavity searches must be conducted by medical personnel but may be monitored by the officer.
 - c. Physical body cavity searches require a search warrant.
5. Documentation
- a. A copy of the written authorization for a strip, visual body cavity or physical body cavity search must be retained in the agency's records.
 - b. A copy of the written authorization must be provided to the person searched or his or her representative, if requested
 - c. In the case of a physical body cavity search, a copy of the search warrant must also be retained in the agency's records.
6. Other considerations
- a. A person who knowingly and willfully authorizes or conducts a strip, visual or physical body cavity search in violation of Penal Code Section 4030 is guilty of a misdemeanor.
 - b. A person who knowingly and willfully authorizes or conducts a strip, visual or physical body cavity search in violation of Penal Code Section 4030 is also subject to civil liability.

NOTE: When a person is in custody for a felony, law enforcement has broader discretion to conduct visual, strip, and body cavity searches.

X. RIGHTS OF ARRESTED PERSONS TO PHONE CALLS AND PRIVILEGED COMMUNICATIONS

- A. Arrested adults are allowed three completed telephone calls within three hours of the arrest unless physically impossible (Penal Code Section 851.5)
1. The booking sheet often requires the arresting officer to confirm that the arrested person has been given the opportunity to make the three calls.
 2. The arresting officer must advise the arrested person of this right.
 3. Local calls can be made at no expense to the arrested person.
 4. If the arrested person calls an attorney, it is illegal to eavesdrop, monitor or record that conversation.
 5. A person who willfully deprives an arrested person of their right to telephone calls as required by Penal Code Section 851.5 is guilty of a misdemeanor.
- B. A juvenile taken into custody has a right to make at least two completed phone calls within one hour of arrest (Welfare and Institutions 308(b)).
1. One of the telephone calls may be made to a parent or guardian and one to an attorney.
 2. A person who willfully deprives an arrested juvenile of their right to telephone calls as required by Welfare and Institutions Code 308(b) is guilty of a misdemeanor.

NOTE: Additional information on juvenile law is contained in Instructor Unit Guide #11- Juvenile Law and Procedure.

- C. An arrested person is entitled to private, unmonitored conversations between an attorney, spiritual advisor, or licensed physician. (Penal Code Section 636)
1. This applies to person-to-person conversations, and telephone conversations
 2. A person who willfully deprives an arrested person of their right to private, unmonitored conversations as required by Penal Code Section 636 is guilty of a felony.

XI. FOLLOW UP RESPONSIBILITIES OF CUSTODIAL PERSONNEL

- A. Once the patrol officer releases the arrested person to the local detention facility, the responsibility for the care and custody of that person shifts to the custodial personnel.
- B. The responsibilities of custodial personnel/local detention facilities include but are not limited to:
 - 1. Facility security
 - 2. Provision of adequate shelter, meals, care and safety for every prisoner
- C. There are a number of statutes, regulations, procedures and guidelines which impact local detention facilities. Among these are:
 - 1. State and Federal Constitutional protections
 - 2. California statutes including but not limited to California Penal Code, Welfare and Institutions Code, Business and Professions Code
 - 3. Minimum Jail Standards for Local Detention Facilities (California Administrative Code, Title 15)
 - 4. Court imposed restrictions (e.g., orders relating to overcrowding, special handling of prisoners, etc.)
 - 5. Local agency policies
- D. Custodial personnel have a responsibility to ensure that the rights of persons in custody are not infringed. Among the rights a person retains in custody are:
 - 1. Freedom of speech
 - 2. A quick and speedy trial
 - 3. Freedom of religion (Penal Code Section 4027)
 - 4. Visits from attorneys, physicians, and other persons

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Penal Code References
Sample Intake Forms

PENAL CODE REFERENCES

Penal Code Section 147: Inhumanity to prisoners. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office. 1872.

Penal Code Section 149: Assaults, etc., by officers, under color of authority. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by both such fine and imprisonment. Stats. 1957, Chap. 109. Fricke, C.P. 8th, p. 33.

Students should be aware that they can be "set-up".

Penal Code Section 848. Duty of officer arresting with warrant. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law. - 1872.

Ref. P. C. 814, 829.
Fricke, C. P. 8th, p. 36.

Penal Code Section 849. Duty to take accused before magistrate, on arrest without a warrant. (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

- (b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:
 - (1) He is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
 - (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.
 - (3) The person was arrested only for being under the influence of a narcotic, drug, or restricted dangerous drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- (c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest, shall not be deemed an arrest, but a detention only. - Amended, Stats. 1971, Chap. 438.

Ref. P. C. 145, 825, 847.
Fricke, C. P. 8th, p. 35, 37.

FIREARMS IN JAIL FACILITY

Penal Code Section 4574 - Knowingly bringing into or possessing any firearms, deadly weapons or explosives - felony.

NOTE: Caution students to remember safety when unloading weapon prior to entering jail facility. Relate any incidents of weapons "accidentally" discharging while being unloaded.

An officer may be charged with Penal Code Section 4574 if he/she brings weapon into facility without authorization.

Penal Code Section 647(ff) - Civil Protective Custody-Inebriates

Penal Code Section 4011.6 - Treatment of Prisoner

(apparently mentally disordered) to facility for 72-hour treatment and evaluation.

NOTE: Caution students to remember safety when unloading weapon prior to entering jail facility.

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Penal Code Section 647(ff) - Civil Protective Custody-Inebriates

Penal Code Section 4011.6 - Treatment of Prisoner (apparently mentally disordered) to facility for 72-hour treatment and evaluation.

Penal Code Section 606 - Places of confinement; punishment

Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any place of confinement, is punishable by fine not exceeding ten thousand dollars (\$10,000) and by imprisonment in the state prison, except that where the damages or injury to any city, city and county, or county place of confinement is determined to be four hundred dollars (\$400) or less, he is guilty of a misdemeanor.

Penal Code Section 825.5 - Right of physician or surgeon to visit prisoner

Any physician and surgeon, including a psychiatrist, licensed to practice in this state, who is employed by the prisoner or his attorney to assist in the preparation of the defense, shall be permitted to visit the prisoner while he is in custody.

A prisoner often wants to use his own physician to get prescriptions for drugs.

Prisoner's personal physician should be searched prior to being allowed inside the jail to examine or treat the prisoner.

Explain to students how prisoners will hold medicine in their mouths rather than swallowing it. Later, when officer is not watching, they remove the medicine from their mouths and do whatever they want with it (store, sell or give away).

Penal Code Section 4023 - Jail physician; daily average number of prisoners; appointment; compensation; right of prisoner to provide for own medical attention

Whenever the daily average of more than 100 persons are confined in any county or city jail, there shall be available at all times a duly licensed and practicing physician for the care and treatment of all persons confined therein. Such daily average shall be determined by the number of persons confined in such jails during the last fiscal year. For county jails, such physician shall be designated by the sheriff. The salary of such physician shall be fixed by the supervisors of the county and shall be paid out of the same fund of the county as other claims against the county for salaries are paid.

For city jails, such physician shall be designated and his salary fixed by the council of the city and shall be paid out of the general fund of such city. Any prisoner may decline such care or treatment for himself at his own expense.

In the event a prisoner elects to decline treatment by the county or city jail physician and to provide medical treatment at his own expense, the sheriff or chief of police may have him removed from the county or city jail to a privately owned and operated medical facility or hospital located in the county approved by a judge of the superior court for such treatment. The prisoner shall be liable for the costs incurred by the county or city in providing the necessary custody and security of the prisoner only to the extent that such costs exceed the costs which would have been incurred by the county or city in providing such custody and security if it had provided treatment for him. The prisoner shall at all Physicians at jails (continued)

times remain in the location specified by the court and at no time be permitted to be housed or detained at any facility other than that designated. (Added by Stats 1941, c. 106, p. 15. Amended Stats. 1970, c. 683, p. 1.

Prior to January 1, 1976, phone calls, including those to attorneys, could be made in presence of an officer. Further calls had to be "collect" and did not have to be made until after "booking". Ref. Nt. 5-7, 8.

Penal Code Section 825: Right of attorney to visit prisoner. The defendant must in all cases be taken before the magistrate without unnecessary delay, and in any event, within two days after his arrest, excluding Sundays and holidays; provided however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

After such arrest, any attorney at law entitled to practice in the courts of record of California, may at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefor shall forfeit and pay to the party aggrieved, the sum of five hundred dollars (\$500) to be recovered by action in any court of competent jurisdiction. Amended Stats. 1961, Chap. 2209. Ref. Penal Code Section 145, 847. Fricke, C.P. 8th, p. 35, 150.

Penal Code Section 851.5 - Right of arrested person to make telephone call; posting sign

- (a) Immediately upon being booked, and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls as described in subdivision (b).

The arrested person shall be entitled to make at least three such calls at no expense if the calls are completed to telephone numbers within the local calling area.

- (b) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

That the arrestee has the right to free telephone calls within the local dialing area, or at his own expense if outside the local area, to three of the following:

- (1) An attorney of his choice or, if he has no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall

be posted. This phone call shall not be monitored, eavesdropped upon, or recorded.

- (2) A bail bondsman.
- (3) A relative or other person.
- (c) These telephone calls shall be given immediately upon request, or as soon as practicable.
- (d) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of his right to counsel or of any other right.
- (e) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor. (Added by Stats. 1975, c. 1200, p. 2.)

Note: It is the intent of the Legislature that nothing in this act shall affect the civil remedy of any person for false arrest or imprisonment.

REFERENCE MATERIALS

Blumer, Alice Howard, Jail Operations: A Training Course for Jail Officers, (set of six books).
National Institute of Corrections, Boulder, Colo.

California Administrative Code, Title 15.

California Board of Corrections - Prisoner Transportation Manual.

California Business and Professions Code.

California Penal Code.

This text is used as a reference, along with various departmental policy references.

California Welfare and Institutions Code.

Federal Civil Rights Act.

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