MEDICAL
SYMPOSIUM
2011

Brian Berkowitz
General Counsel
Department of Juvenile Justice
Youth Rights -- Sources

**FEDERAL**

**Constitutional:**
- Eighth Amendment
- Due Process

**Statutory:**
- JJDP Act
- IDEA

**STATE**

**Statutory:**
- Chapter 985
- Chapter 39

**Rule/Policy/Procedure:**
- Chapter 63
- DJJ Policy
“[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. . . .

. . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e. g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted
Eighth Amendment

“In determining when prison conditions pass beyond legitimate punishment and become cruel and unusual, the touchstone is the effect upon inmates of . . .”

Estelle v. Gamble was the first US Supreme Court case to articulate the “deliberate indifference” standard to govern the provision of inmate medical care.

“We conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain….proscribed by the 8th Amendment. This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the 8th Amendment.”

“Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.

In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

It is only such indifference that can offend ‘evolving standards of decency’ in violation of the 8th Amendment.”

The Eleventh Circuit has described deliberate indifference as having three components:

1. Subjective knowledge of a risk of serious harm
2. Disregard of that risk
3. By conduct that is more than mere negligence.

-- *McElligot v. Foley*, 182 F.3d 1248, 1255 (11th Cir.1999)
Eighth Amendment Standard

Deliberate Indifference

It has been held that private physicians under contract to the state are “acting under color of state law” within the meaning of 42 U.S.C. section 1983 when treating inmates.

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United State and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Due Process

**Substantive**

There must be some relationship between the nature, duration and conditions of the custody and the purpose for which the individual is being held.

**Procedural**

Constitutionally sufficient procedures must accompany any deprivation of protected liberty or property interests.

(See, statutorily-conferred rights)
Substantive due process claims, citing the Fourteenth Amendment, may also be the basis for a Section 1983 action.

To the extend that statutory provisions have been violated, the standard may differ markedly from Eighth Amendment claims.
Absent some clear statutory hook, the Eleventh Circuit has evaluated Fourteenth Amendment claims involving inmates under a similar “deliberate indifference” standard.

-- *Dolohite v. Maughon*, 74 F.3d 1027 (11th Cir. 1996)
Due Process

NOTE: Florida statute differentiates the purpose and nature of juvenile confinement from that of adults:

“With adult offenders, the state's primary objective is that of retributive punishment. One of the primary purposes of the Juvenile Justice Act, however, is to "ensure the protection of society, by providing . . . that the most appropriate control, discipline, punishment and treatment can be administered" with "the specific rehabilitation needs of the child. . . .". Given the . . . remedial nature of the statute and the different goals of the juvenile justice system, with its emphasis on rehabilitation rather than retributive punishment, it is constitutionally permissible to treat juvenile offenders differently.”

-- T.M. v. State, 689 So.2d 443 (3 DCA 1997)
BUT:

It may be argued that the rehabilitative purpose of the Juvenile Justice Act is limited to residential commitment.

§ 985.02(4)(b): “[T]he Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.”

Slightly lower standard in detention?
§ 985.01(1)(b): Ensure secure and safe custody, and to promote health and well-being of all children.

§ 985.135 & 985.14 & 985.145
Screening and Assessment

§ 985.18
Medical Examinations and Treatment

§ 985.43
Comprehensive Evaluation for PDR
After a detention petition, or a petition for delinquency has been filed, the court may order the child to be examined by a physician.

The court may also order the child to be evaluated by a psychiatrist or a psychologist, by a district school board educational needs assessment team, or if a developmental disability is suspected or alleged, by a developmental disabilities diagnostic and evaluation team with APD.

If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedures established in chapter 393, chapter 394 or chapter 397 shall be used.
Whenever a child has been found to have committed a delinquent act, or before such finding with the consent of any parent or legal custodian of the child, the court may order the child to be treated by a physician.

The court may also order the child to receive mental health, substance abuse, or retardation services from a psychiatrist, psychologist or other appropriate service provider.

If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedures established in chapter 393, chapter 394 or chapter 397 shall be used.
When any child is detained pending a hearing, the person in charge of the detention center, or facility or his or her representative may authorize a triage examination as a preliminary screening device to determine if the child is in need of medical care or isolation or provide or cause to be provided such medical or surgical services as may be deemed necessary by a physician.
Whenever a child found to have committed a delinquent act is placed by order of the court within the care and custody or under the supervision of DJJ

And it appears to the court that there is no parent, guardian, or person standing in loco parentis who is capable of authorizing or willing to authorize medical surgical, dental, or other remedial care or treatment for the child.

The court may, after due notice to the parent, guardian or person standing in loco parentis, if any, order that a representative of DJJ may authorize such medical, surgical dental or other remedial care for the child by licensed practitioners as may from time to time appear necessary.
s. 985.18(5) F.S.

Upon specific appropriation, DJJ may obtain comprehensive evaluations, including, but not limited to, medical, academic, psychological, sociological, and vocational needs of a youth with multiple arrests for all level of criminal acts or a youth committed to a minimum-risk or low-risk commitment program.
s. 985.18(6) F.S.

A physician shall be immediately notified by the person taking the child into custody or the person having custody if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care.

A child may be provided mental health, substance abuse or retardation services, in emergency situations, pursuant to Chapters 393, 394 and 397.

After a hearing, the court may order the custodial parent, guardian, or other custodian, if found able to do so, to reimburse the county or the state for the expense.
s. 985.18(7) F.S.

Nothing in the section shall be deemed to eliminate the right of the parent of the child to consent to examination or treatment for the child,

except that consent of a parent shall not be required if the physician determines there is an injury or illness requiring immediate treatment and the child consents to such treatment

or an ex parte court order is obtained authorizing such treatment.
Nothing in the section shall be construed to authorize the permanent sterilization of any child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.
s. 985.18(9) F.S.

Except as provided in this section, nothing in this section shall be deemed to preclude a court from ordering services or treatment to be provided to a child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenents and practices of a church or religious organization when requested by the child.
Physical Plant
lighting, heat, plumbing, ventilation, living space, noise levels, recreation space

Sanitation
control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping, and working

Safety
protection from violent, deranged, or diseased inmates, fire protection, emergency evacuation

Inmate needs and services
clothing, nutrition, bedding, medical, dental, and mental health care, visitation time, exercise and recreation, educational and rehabilitative programming

Staffing
trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other inmates

Immunity in Tort Actions for State Employees
Under Florida Statutes section 768.28, the state waives sovereign immunity for liability for torts but only to the extent specified in the law.

Actions against the state or any of its agencies or subdivisions may be prosecuted subject to the limitations specified under Chapter 768.
The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances.

The state shall not be liable to pay a claim which exceeds the sum of $100,000 for any single claim or judgment or a total not to exceed $200,000.
No officer, employee, or agent of the state or any of its subdivisions shall be held personally liable in tort or named as a party defendant

In any action or injury or damage suffered as a result of any act, event, or omission of action

In the scope of his or her employment or function

UNLESS
Such officer, employee or agent

acted in bad faith

OR

with malicious purpose

OR

In a manner exhibiting wanton and willful disregard of human rights, safety or property
The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.
DJJ Rules

- Chapter 63 Administrative Code
  - Proposed Health Care rule
  - Proposed Mental Health & Substance Abuse rule
  - Rules governing specific programs

- Manuals
Questions?