Kingsley v. Hendrickson: The Impact Regarding Non-Sentenced Detainees

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Abstract

Prior to the Michael Kingsley (once a pretrial detainee) lawsuit alleging he was the victim of excessive force at a county jail in Wisconsin, there were several arguments regarding the treatment and differentiations between whose who were not sentenced versus those who were. Initially, the jury was reminded that the person alleging the claim has the burden of proof regarding proving the force used was unreasonable under the facts at the time of the event and that it was reckless and had no regard for their safety by not taking steps to reduce the risk of harm. Initially, Kingsley did not win the verdict and appealed the outcome. During the appeal, several factors were considered including: The Fourteenth Amendment's Due Process Clause, and the Fourth Amendment regarding excessive force by those arrested, and the Eighth Amendment which involves sentenced prisoners. Upon conclusion, the ruling was in favor of the petitioner by Judge Hamilton. The judge concluded that pretrial detainees are protected from excessive force per the outlining of the Due Process Clause and that more clarity was still needed regarding which standards should apply per case (Magun, 2016).

Introduction

For several decades, there have been laws that govern the rights of those who are incarcerated. From the state level to the federal level, multiple rulings and lawsuits have helped shaped the judicial system. Many of these rulings, however, were only applicable to those who were arrestees and convicted criminals. As a result, many who were pre-trial detainees were subjected to the terms outlined in rulings that governed those who were convicted. By doing this, those who were pre-sentenced often struggled with proving cases of alleged mistreatment based on the stipulations set forth by the previous case laws. The Kingsley v. Hendrickson ruling shined a new light regarding standards of pre-sentenced detainees and the rights and limitations.

Michael Kingsley was being held in a county jail located in the state of Washington. While there, he covered a light fixture with paper and was subsequently ordered to take it down several times; to which he refused. His continuous refusal to comply with the orders given to him led to a use of force ensuing. Mr. Kingsley was ultimately secured and placed in another cell so the paper could be removed from the light fixture in the previous cell. While in the other cell, Mr. Kingsley alleged he was tased and his head was slammed into a concrete bunk. He further claimed he was left in restraints for several minutes at the conclusion of the incident. Upon release, he filed a claim in federal district court regarding excessive force being used on him based off the Fourteenth Amendment's Due Process Clause. The findings did not rule in his favor at the conclusion of his case. Mr. Kingsley subsequently appealed the ruling and presented his case to the

Seventh Circuit and because of the jury being given improper instructions, the panel advised the instructions were correct because the law required a subjective inquiring of the officer's state of mind.

One judge, however, raised the question regarding the standard of excessive force claims on those who were not convicted. This led to the Supreme Court reviewing if excessive force claims involving pre-sentenced detainees should be reviewed on a subjective or objective standard. To make a further determination regarding the fairness of a pre-trial detainee utilizing an objective standard, a two-pronged test was conducted. The first prong examined the correlation between the officer's mindset and the injury to the detainee. The second prong determined if the level of force was excessive. It was ultimately determined that the claimant could, in fact, prevail in an excessive force claim by utilization of an objective reasonableness standard.

Though this ruling set a new precedent regarding excessive use of force claims from pre-trial detainees, other aspects of their protections were still unclear. The protections regarding providing medical needs, confinement conditions, and the right to protections still is dependent on the area in which the suit is filed. These aspects could either be reviewed under a subjective or objective standard which could ultimately cause difficulty in the claimant proving their case.

In addition to the breakdown of the Kingsley v. Hendrickson case, the following case laws will be dissected: Graham v. Connor, Hudson v. McMillian, Whitley v. Albers, the 8th amendment, the 14th amendment, the Due Process Clause, and U.S. Code Section 1983. I will outline the abovementioned rulings and explain how they are applicable to those who are incarcerated or in the process of being incarcerated. This will show how vital the Kingsley v. Hendrickson ruling is for those who have not been sentenced and what the outcome truly means. In addition, this review will also explore the future of governing agencies that house those who are detained versus facilities that house sentenced persons.

Literature Review

Eight Amendment

For several decades, there have been laws enacted regarding those who require detainment. Many of the laws, however, were geared towards persons who had already been sentenced. Though these laws governed the treatment of those imprisoned, there was not much information pertaining to persons who were pretrial detainees. The 8th Amendment was adopted on December 15, 1791, by congress and essentially provides three main protections to persons who are prisoners. The first protection states courts are not allowed to set a bond amount that is unreasonable, but instead, must set bail based off the circumstances of the case. In addition, each person's history must be considered prior to establishing a bail amount. The second protection states courts cannot impose excessive fines. For a fine to be deemed unreasonable, it must not be proportional to the crime that was committed. It should be noted that many bail counts are set by the law. The last protection is protection from cruel and unusual punishment despite the crime

committed. Per the initial outline in the amendment, cruel and unusual punishment was not defined, but courts have defined it through several rulings.

In Solem v. Helm, the Supreme Court advised that a sentence shall not be disproportionate to the crime committed regardless if it was a misdemeanor or felony. To ensure consistency, courts have to consider several factors including: the severity of the offense, harshness, similar sentence impositions in the same area, and similar sentence impositions in other jurisdictions (Cruel and Unusual…, 2021).

Age was also taken into consideration regarding the imposition of imprisonment of juveniles. In Graham v. Florida, it was determined that any juvenile that did not commit an offence regarding homicide, the Supreme Court held that life imprisonment without parole would be unconstitutional. Miller v. Alabama also expanded on this ruling and advised life imprisonment without parole was unconstitutional for all juvenile offenders regardless of the offence (Cruel and Unusual…, 2021).

As previously stated before, though the term “cruel and unusual punishment” is listed in 8th Amendment, there is no clear definition of what it means. Several rulings were subsequently held that expounded on what “cruel and unusual punishment” really means. In Ingraham v. Wright, it was held by the Supreme Court that “unnecessary and wanton infliction of pain” constitutes as cruel and unusual punishment. This definition was reevaluated in Whitley v. Albers and stated the act may appear like it is an unconstitutional “unnecessary and wanton inflection of pain” might be constitutional, if it occurs in good faith to restore order and ensure the safety and security (Cruel and Unusual…, 2021). In addition, the Hudson v. McMillian ruling, the criteria for cruel and unusual was further expounded and stated just because a prisoner did not sustain significant injury, an encounter could still be cruel and unusual punishment. The denial of medical treatment (Estelle v. Gamble) and overcrowding (Brown v. Plata) were also in the realm of cruel and unusual punishments.

Fourteenth Amendment

The 14th Amendment, which was also ratified in 1868, focuses on the rights of citizens pertaining to the government. In summary, this amendment ensures laws would not impede citizens of their privileges or protections. In addition, the Due Process Clause is outlined in the 14th Amendment. The Due Process Clause can be broken down into the following three sub-sets: 1. Procedural due process, 2. The Bill of Rights incorporated, and 3. Substantive due process. Procedural due process ensures that the government must adhere to certain procedures prior to depriving someone of life, liberty, or property. The incorporation of the bill of rights stipulates everyone has protection from the state and federal government regarding their Bill of Rights. Finally, the substantive due process protection outlines protections to ensure certain rights not outlined in the constitution shall still be protected (14th Amendment…, 2021).

Graham v. Connor

In November of 1984, police observed Dethorne Graham quickly enter and depart a convenience store. As a result, the police followed and pulled Mr. Graham over. Mr. Graham, who was a diabetic exited the car and began to run around it due to him still

having issues regarding his insulin levels. Due to his medical state, Mr. Graham passed out and realized he was in hand-restraints lying face-down on the ground. Police struggled to secure Mr. Graham in the vehicle as he attempted to provide proof regarding his medical state. It was later determined that no crime was committed by Mr. Graham, and he was released. Mr. Graham proceeded to file a lawsuit with the involved officers based on the claim of excessive force. The court ruled in favor of the officers and Mr. Graham attempted to appeal the decision based on the standard of objective reasonableness under the Fourth Amendment. The Appeals Court also rejected this based off the concept that "good faith" is vital in determining the application of force. Ultimately, use of force circumstances must be assessed based off what a reasonable officer on the scene would have done as opposed of hindsight assessments (Ross, 2002).

Hudson v. McMillian

Keith Hudson was an inmate currently incarcerated at a facility in the state of Louisiana. During his stay, he alleged he was beaten by two correctional officers while their supervisor observed without interfering. Hudson subsequently sued alleging he was deprived of rights, privileges or immunities afforded in the Constitution. Initially the ruling determined his 8th Amendment was violated due to force being used when there was no need. This was later reversed due to the inmate being unable to prove significant injury, thus not being excessive. As a result, it was determined that an inmate cannot make an allegation of excessive force if there are no substantial injuries sustained (based off the malicious and sadistic use of force) (Van Slyke, 1993).

Whitley v. Albers

A riot transpired in the Oregon State Penitentiary and a hostage was taken into a cell located on the second tier. The highest-ranking officer instructed armed officers to enter the unit and instructed them to fire a warning shot. In addition, the officers were instructed to shoot low at any inmates attempting to go upstairs because he was going to be heading up to attempt to free the hostage. During this incident. The petitioner (Gerald Albers) was shot in his left knee when he started going up the stairs. As a result, Mr. Albers filed a suit alleging his 8th Amendment was violated (protection from cruel and unusual punishment). The findings were in favor of the defendants on the basis of staff acting in good faith to restore order in the facility. There was no proof of wantonness of blatant intent to do harm to the inmate (Individually and as Assistant…, 2021).

Title 42 U.S. Code Section 1983

This law gives people the right to sue state government employees and any other official who acted "under the color of state law" for civil right violations. There was initially no federal cause to seek personnel who violated citizens constitutional rights, so the only option was to bring claims in the court system.

Kingsley v. Hendrickson

Upon release from custody, Michael Kingsley (once a pretrial detainee) filed a lawsuit alleging he was the victim of excessive force at a county jail in Wisconsin. The jury was reminded that the person alleging the claim has the burden of proof regarding proving the force used was unreasonable under the facts at the time of the event and that it was reckless and had no regard for their safety by not taking steps to reduce the risk of harm. At first, Kingsley did not win the verdict and appealed the outcome. During the appeal, several factors were considered including: The Fourteenth Amendment's Due Process Clause, and the Fourth Amendment regarding excessive force by those arrested, and the Eighth Amendment which involves sentenced prisoners. Upon conclusion, the ruling was in favor of the petitioner by Judge Hamilton. The judge concluded that pretrial detainees are protected from excessive force per the outlining of the Due Process Clause and that more clarity was still needed regarding which standards should apply per case (Magun, 2016).

In comparison to the previously reviewed cases, Kingsley differs because it outlines the difference between those who are convicted and those who are pre-trail detainees. Prior to this ruling, circuit courts were applying the Eighth Amendment's standard of deliberate in difference (subjective). This made it harder for those who had not been convicted to argue cases of mistreatment. In addition, it also opened the window for other forms of alleged mistreatment including medical malpractice and inappropriate forms of confinement (Magun, 2016).

There have been several rulings that impact the overall process regarding the incarceration/ detainment of United States citizens. In addition, it is imperative that the correct constitutional provisions are utilized in legal proceedings. Those who are detained or in the process of being arrested would initiate claims under the Fourth Amendment's Unreasonable Search and Seizure Clause. Those who are in custody and have not been convicted would under the Fourteenth Amendment's Due Process Clause. Lastly, convicted criminals bring these claims under the Eighth Amendment's Cruel and Unusual Punishment Clause. These varying factors could essentially influence the outcome of an issue presented by someone who was not convicted at the time of the alleged mistreatment. In part, this is due to pre-trail detainees still being presumably innocent. Prior to the Kingsley v. Hendrickson ruling, non-convicted detainees would have to prove the officer's intent by presenting evidence of a subjective mindset of the officer at the time of incident. Now, an objective standard generates the opportunity to resolution regarding those who have not yet been sentenced. Though there may still be some hazy areas regarding the objective and subjective standard regarding confinement and medical malpractice, the standard of excessive use of force incidents are typically viewed under an objective standard creating less of struggle regarding the complainant's resolution (Lambroza, 2021).

Methods

Due to Use of Force incidents being inevitable within a correctional setting, it is imperative that the laws which govern them are adhered to. Being that the Kingsley v. Hendrickson Supreme Court Case is relatively new, many agencies are unaware of what it truly means. The premise of this study was to identify the understanding and application of the Kingsley v. Hendrickson ruling in various correctional settings.

A survey was generated and provided to several surrounding agencies which housed pre-detainees. These facilities were those governed by either a Sheriff's Office, their Board of County Commissioners, Privatized, or another entity. Each facility was also asked to disclose their approximate inmate population. The total number of inmates in the facility would aid with generating accurate percentages of the Use of Force incidents per agency. The survey questions were designed to determine if the Kingsley v. Hendrickson ruling has been applied to their correctional setting and if there was a correlation between the frequency of Use of Force Incidents upon training staff. Some questions were also given to the partakers regarding their staff's overall response to the new guidelines. This was imperative due to staff members often being reluctant to new rulings and often uncomfortable when there is essentially another law that must be put into application.

The survey was voluntary and generated based on those surveyed being able to maintain anonymity in hopes of receiving more forthcoming participation. A potential area of weakness is the difficulty of providing the survey results to those who were interested in receiving it.

Results

A survey was conducted from February 8, 2022, until February 24,2022 regarding the implication of the Kingsley v. Hendrickson ruling in Use of Force Polices in various correctional settings. The survey was submitted to a total of thirty-five agencies. A total of ten agencies (29%) participated in a series of questions regarding the application of Kingsley v. Hendrickson within their facility and the results shall be expounded on below. The first question asked respondents to indicate the overall inmate population for their agency. Four agencies indicated having 100-500 inmates (40%),

- Two agencies indicated having 501-900 inmates (20%),
- Four agencies indicated having 1001 or more inmates (40%)

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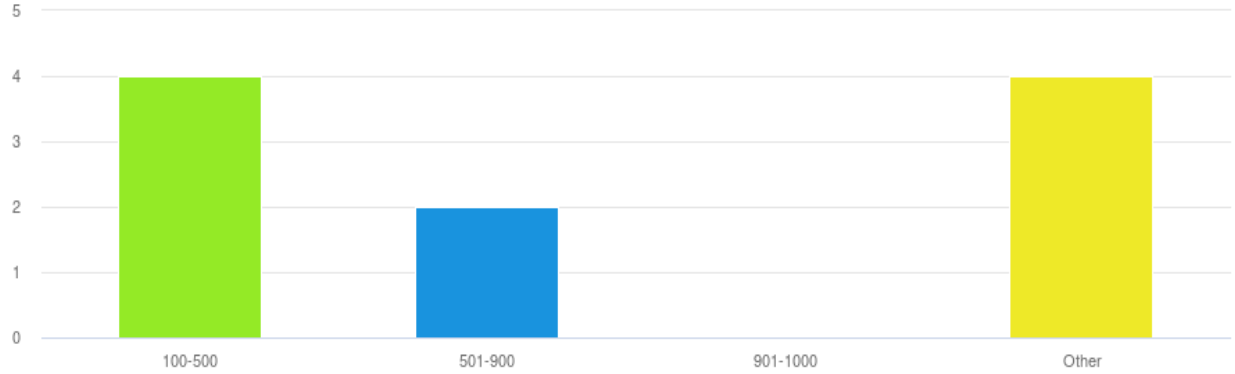
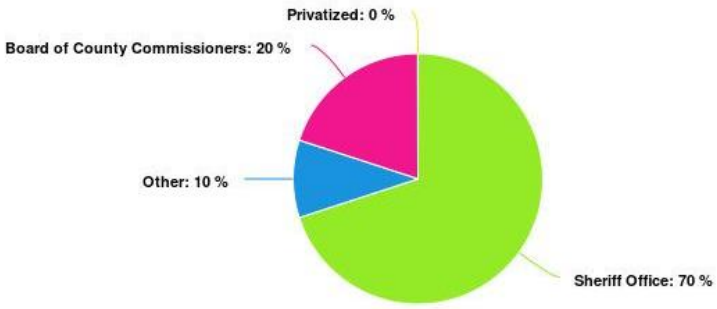
Table 1: What is your jail population?

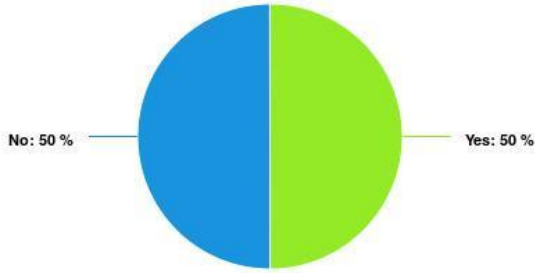


The second survey question inquired if respondents were a Sheriff's Office, Board of Commissioners, or other.

- 7 indicated Sheriff's Office (70%),
- 2 indicated Board of County Commissioners (20%),
- 1 indicated Other (10%).

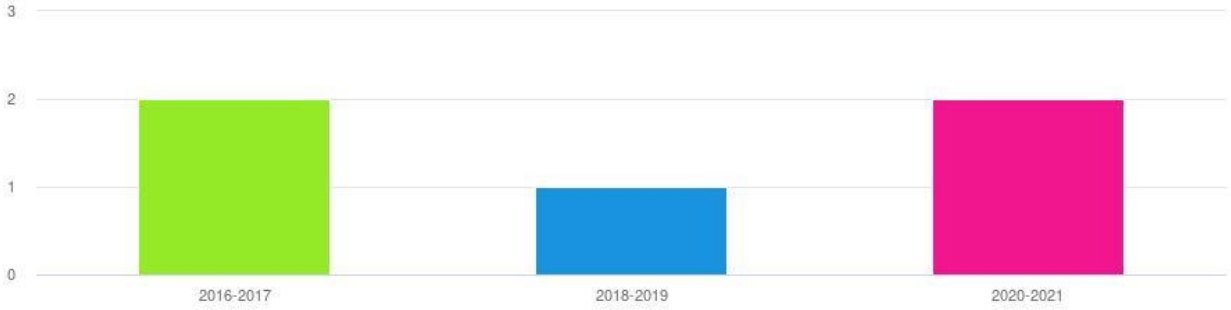


3. Does your jail recognize the "Kingsley v. Hendrickson Ruling" with respect to your use of force policy?



- Five (50%) reported their facility recognizes the Kingsley v. Hendrickson ruling
- Five (50%) reported their facility does not recognize the Kingsley v. Hendrickson ruling

4. When did your agency implement and add the “Kingsley v. Hendrickson Ruling” to your use of force policy?



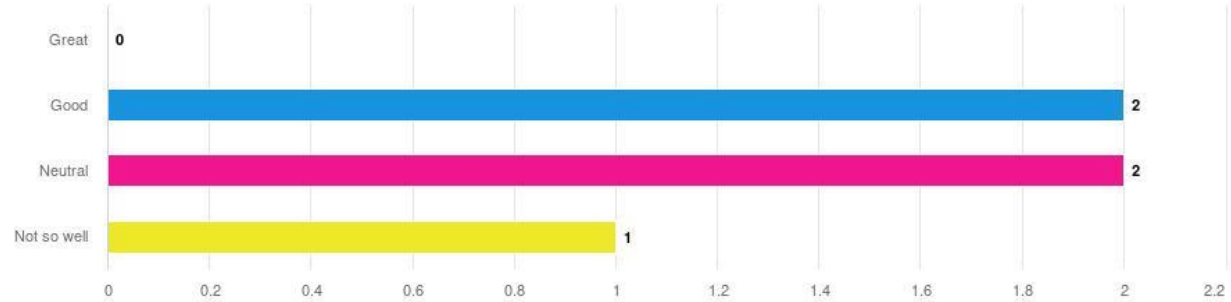
- Two (20%) reported implementing the ruling between 2016-2017
- One (10%) reported implementing the ruling between 2018-2019
- Two (20%) reported implementing the ruling between 2020-2021

Respondents were able to cease answering any additional questions once it was determined they do not recognize the Kingsley v. Hendrickson ruling in their facility

5. How do you feel your agency did with training your certified officers and the implementation of the “Kingsley v. Hendrickson Ruling”?

- One (10%) reported a great response from the ruling’s implication
- Zero (0%) reported a good response from the ruling’s implication
- Two (2%) reported a neutral response from the ruling’s implication
- Two (2%) reported a not so well response from the ruling’s implication

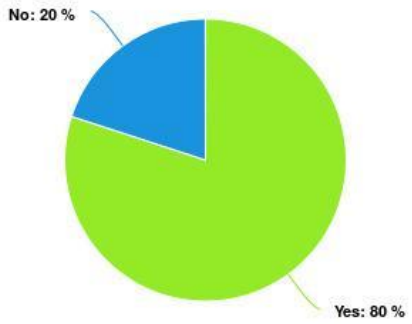
6. How did your certified officers respond to the training and implementation of the “Kingsley v. Hendrickson Ruling”?



- Zero (0%) reported a good response
- Two (20%) reported a good response
- Two (20%) reported a neutral response

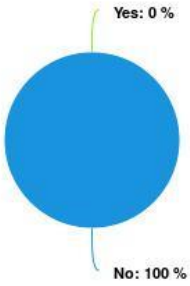
- One (10%) reported a not so well response

8. Does your agency offer additional de-escalation training, other than annual in-service?



- Twenty (20%) reported no additional de-escalation training was provided
- Eighty (80%) reported additional de-escalation training was provided

7. Have you seen a decline in use of force situations since your agency implemented the "Kingsley v. Hendrickson Ruling" in your use of force policy?



- One hundred (100%) of the participating agencies did not notice a decline in Use of Force instances since enacting the Kingsley v. Hendrickson ruling

Discussion

Upon completion of the survey, it was revealed that the Kingsley v. Hendrickson ruling was only implemented in 50% of the participating agencies Use of Force Policy. Out of the 50% of those agencies, all reported that the implementation had no impact on the amount of Use of Force encounters. Lastly, it was determined that the implementation of the policy resulted in certified staff not responding as well to the change in policy overall.

The findings suggest that the Kingsley v. Hendrickson ruling is not as widespread as previous rulings that impact correctional settings. This could potentially be a result of the ruling still being new (2015) in comparison to other United States Supreme Court Rulings that were ratified prior to (Whitley v. Albers (1986), Graham v. Connor (1989), and Hudson v. McMillian (1992)). Training and more vocalizing regarding the ruling could aid in additional agencies gaining insight about this ruling due to its possible role as corrections constantly evolves.

While Michael Kingsley was incarcerated, he was ordered to remove a piece of paper covering a light cell but refused to do so. Staff were subsequently instructed to remove the paper and to transfer him to another cell. During this incident, Kingsley refused to follow the instructions given to him and was ultimately assisted out of the cell. While being assisted to his feet, Kingsley alleged he sustained an injury to his foot resulting in him being unable to walk or stand. One inside of the different cell, Kingsley resisted staff as they attempted to remove hand-restraints from him. Kingsley was ultimately secured against the floor and a taser was utilized. Michael Kingsley then sued claiming his due process rights were violated. Though the ruling was initially in favor of the defendants, The U.S. Court of Appeals ultimately reversed the decision. With this in mind, the results could also postulate an overall reluctance with Kingsley v. Hendrickson because of the impression that the ruling could further complicate the duties of certified staff when engaging pre-detainees.

The results are a good starting point but was limited due to there being a small number of participating agencies. In order to achieve better results, additional agencies would need to participate including agencies that are not in the state to receive insight on a national level. In addition, polling regarding the interpretation of the ruling would be an excellent add on. It is often difficult to decipher court rulings due to verbiage and at times the ambiguity of the outcome. It is important to note that the Kingsley v. Hendrickson has more components in addition to the Use of Force aspect. The protections regarding providing medical needs, confinement conditions, and the right to protections during incarceration are other components that make this ruling unique. Proving an incident was objectively unreasonable is another aspect that must exist to validate a claim under this ruling.

Recommendations

The survey was a great starting point to gain insight regarding how other agencies have been proceeding with introducing and implementing the Kingsley v. Hendrickson ruling in their current Use of Force policies and procedures. It was also an eye opener regarding how many agencies are not aware of the ruling and the importance of it in a correctional setting.

I recommend starting locally and developing a group of representatives from several agencies to compile methods to distribute vital information with each other. Corrections in general is constantly evolving and it is not realistic for each agency to stay abreast with all the changes alone. Scheduled meetings would commence bi-annually at various locations to ensure the traveling is distributed fairly. In addition, each agency would be responsible for monitoring various forms of the laws that impact corrections to ensure all areas are being covered. Some agencies would monitor federal rulings, while others would maintain updates on a state and local level.

As the organization grows, additional members would be recruited in neighboring states to ensure the continuous spread of changes that impact the agencies the most. In addition to the bi-annually meetings, contacts would be provided in the event a change occurs that needs immediate attention.

Lastly, continuous training within each agency to ensure the certified staff members there are staying informed. Line staff will ultimately have the most encounters with those who are incarcerated. The vitality of ensuring they are aware of the changes we are being met with will ensure the overall success of the agencies.

Lieutenant Nikki Sherwood has been in corrections for 15 years and currently holds the rank of Lieutenant with the Osceola County Corrections Department. She started her career with the Department of Corrections in 2007 and in 2011 decided to explore another side of corrections (pre-sentenced detainees). In 2011 she began working for the Osceola County Corrections Department, where she excelled and progressed through the rankings of Corporal, Sergeant and now Lieutenant. Upon successful completion of multiple trainings and leadership programs, Lieutenant Sherwood continues to bring additional resources to the agency and staff without hesitation. Lieutenant Sherwood continues to be an advocate of training and education and truly believes you never stop learning.

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Appendix

1. What is your jail population?
    a. 100-500
    b. 501-900
    c. 901-100
    d. Other

2. Which of the following does your agency fall under?
    a. Sheriff Office
    b. Board of County Commissioners
    c. Privatized
    d. Other _____

3. Does your jail recognize the “Kingsley v. Hendrickson Ruling” with respect to your use of force policy?
    a. Yes
    b. No ***(If “No” to this question, please provide a response. This will then end your portion of the survey.)***

4. When did your agency implement and add the “Kingsley v. Hendrickson Ruling” to your use of force policy?
    a. 2016-2017
    b. 2018-2019
    c. 2020-2021

5. How do you feel your agency did with training your certified officers and the implementation of the “Kingsley v. Hendrickson Ruling”?
    a. Great
    b. Good
    c. Neutral
    d. Not so well

6. How did your certified officers respond to the training and implementation of the “Kingsley v. Hendrickson Ruling”?
    a. Great
    b. Good
    c. Neutral
    d. Not so well

7. Have you seen a decline in use of force situations since your agency implemented the “Kingsley v. Hendrickson Ruling” in your use of force policy?
    a. Yes
    b. No

8. Does your agency offer additional de-escalation training, other than annual in-service?
    a. Yes
    b. No

    If YES, what are the additional de-escalation trainings?

9. Is there anything I did not include in this survey that you feel could be helpful?