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JAIL RISK MANAGEMENT LIABILITY
AND LEGAL UPDATE

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Overview

- Legal landscape for inmate claims
  - Federal
  - State
  - Constitutional (Civil Rights/1983 Claims)
  - Medical care
  - Suicide
  - Solitary Confinement
- Fostering inmate and officer safety
  - Full-body scanners
  - Body worn cameras
  - Telehealth
  - Medication Assisted Treatment
- Sample policies

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On this day in history . . . .

1873 - First women's prison run by women opens at Indiana Reformatory Institute

1943 – Chevy Chase born

1945 - Microwave oven patented

1950 - Cleveland Browns play Pittsburgh Steelers for 1st time

1971 - John Lennon releases his megahit "Imagine"
Jail Risk Management Liability

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Legal basis for inmate claims

• Substantial number of claims
• Federal court for constitution-based claims
  ▪ Primary court for inmate lawsuits
• State court for state law-based claims
• Significant resources expended
• Understanding greatest risks may alleviate time and money
Constitutional basis

Civil rights claims are raised via 42 U.S.C.A. §1983 through a variety of the Amendments to the Constitution

High percentage of claims:

- Medical care
- Suicide
- Solitary confinement
Constitutional basis

County cannot be held responsible for acts of employees under §1983 using theory of respondeat superior or vicarious liability
Constitutional basis

County may be liable when:

- The alleged unconstitutional act “implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.”
Constitutional basis

- Includes: “constitutional deprivations visited pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decision-making channels.”
Constitutional basis

Individual Liability: Culpable Mental State:

• Requires proof that the official “knows of and disregards an excessive risk to inmate health or safety.” *Mutschler v. SCI Albion*, 445 Fed. Appx. 617, 620 (3rd Cir. 2011).
Medical care

SCOTUS

Held that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” Estelle v. Gamble, 429 U.S. 97, 104 (1976).
Medical care

Serious medical need established:

• If condition diagnosed by a physician as requiring treatment
• Is easily recognizable by a lay person
• By “reference to the effect of denying the particular treatment”
Medical care

Serious medical need established:

• Where there is “unnecessary and wanton infliction of pain”

• Where “denial or delay causes an inmate to suffer a life-long handicap or permanent loss…”
Mere disagreement as to the proper medical treatment is insufficient to state a claim for constitutional deprivation. *Spruill v. Gillis*, 372 F.3d 218 (3rd Cir. 2014).
Suicide

Failure to prevent suicide:

• the detainee had a “particular vulnerability to suicide”

• the custodial officer knew or should have known of that vulnerability
Suicide

Custodial officers have been found to “know of a detainee’s vulnerability to suicide when they have actual knowledge of a suicide threat, previous suicide attempts, or a diagnosis that identifies suicidal tendencies.”
Inmate with serious history of mental health issues including suicide attempt at multiple prisons

Placed in RHU and isolated
Allegations:

- Insufficient psych staff
- Failed to ensure adequate frequency of MH appointments
- Inadequate training on mental illness
- Meds not adequately monitored for effectiveness
- Meds used as a substitute for other, more effective treatments
• Officials “… upheld policies and practices...of sentencing prisoners to solitary confinement based on behavior that was caused by mental illness and intellectual disability.”

• Officials had responsibility for policies pertaining to the use of solitary confinement and the appropriateness of placement in RHU
Systemic deficiencies asserted:

- punished the mentally ill, rather than treat
- a fragmented mental healthcare program with insufficient staffing and poor diagnostic procedures
Failure to train allegations on:

• recognizing and managing seriously mentally ill and suicidal prisoners
• on the adverse impact of solitary confinement on those with mental illnesses
Court:

• Not just suicide case, but seeks to hold officials accountable for inhumane conditions while alive

• Policies in place that lead to repeated confinement in RHU
“Key component” to claim:

“...the defendants permitted [inmate]-with his fragile mental health condition and history of self-harm and suicide attempts—to be repeatedly subjected to the harsh and unforgiving confines of solitary confinement.”
Solitary confinement

“...we first acknowledge the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement."
Suit sought to stop “...the cruel and unusual punishment of prisoners in PA prisons diagnosed with serious mental illness” and confined in RHUs
Isolation is damaging

No social interaction to keep them grounded in reality

National Commission on Correction Health Care—inmates who are seriously ill should not be confined under conditions of extreme isolation
Settlement:

- Established processes and procedures for dealing with serious mental illness
- Screening and development of an Individual Recovery Plan
- If have serious mental illness, no RHU absent exceptional circumstances. Even then, limitations
Residential treatment units
Host of other procedures to address individuals with some type of mental illness
Training of staff in suicide prevention
Adequate staffing
Body scanners

• A tool to stop drugs coming into the prison
• Stopping one OD death because of drugs brought into the prison will effectively pay for the scanner
• An effective deterrent
Related legal standards

• “Correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process” Florence v. Board of Chosen Freeholders, 132 S. Ct. 1510 (2012)

• Case addressed strip search standards and made clear that correctional officials have reasonable basis to search both sentenced and non-sentenced inmates because there is a legitimate interest in preventing contraband
Related legal standards

- Use of body scanner considered less intrusive and less disruptive than some physical searches
- Related to legitimate governmental interest and alternatives considered potentially more intrusive
Body scanner technology

- Technology behind body scanners allows for significant detection while protecting inmate’s privacy

- Use of scanner is more efficient (takes less time than a physical search and effective (It shows everything!)
Requirements

• Check state law/regulations

Pennsylvania examples:

- DEP requires radiological survey be performed by a qualified expert and submitted for review and approval
- Must have a written radiation safety program
- Written plan for routine inspections and checks
Requirements

• Operator training
• Procedures to maintain control of the device and prevent operation by an unauthorized user
• Policies regarding how often an individual will be scanned
• Cannot scan inmates known or declared to be pregnant
Requirements

• Install scanners in locations outside of routinely occupied areas
• Inspection zone needed around scanner where bystanders are prohibited during operation
• Operation of scanner permitted only through individual passwords
• Appropriate notices are to be provided
Scanner policy

• Should include operating procedures, safety considerations and maintenance requirements
• Address length of time scans to be maintained whether or not they depict contraband
• Include guidelines for dissemination of scans.
Impact of Body Worn Cameras on Officer and Inmate Safety
Traditional use by law enforcement

Traditional law enforcement utilize body cameras to

1. Improve police practices and address concerns of the public about potential use of force

2. Act as a surveillance tool promoting both officer safety and to prevent crime

3. Provide evidence of police behavior
Pros and Cons of Body Worn Cameras

Pros

• Transparency
• Increased civility
• Faster resolution of complaints
• Corroboration
• Training opportunities
Pros and Cons of Body Worn Cameras

Cons

• Cannot be relied on to the exclusion of proper training
• May lend itself to more of a “show”
• Can limit privacy (of officers as well as those filmed)
• Possible wiretap issues
Body worn cameras in jails

• Many CERT teams utilize these in place of hand-held videotaping of events (e.g., use of force, cell extractions)

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Issues specific to correctional setting

• Less expectation of privacy for inmates
• Use of body camera better than hand-held to give more freedom of movement
• Multiple persons wearing body camera will cover multiple versions of event
• Inmates may show more restraint in interaction with officers
Issues specific to correctional setting

- Officers will know their actions are recorded which may curb inappropriate behavior
- Policies with guidelines for use will be critical
Tele-Health
• Many correctional facilities contract for medical and mental health services due to limited resources

• Technology for tele-medicine provides access to services

• Use of tele-medicine can meet required standards for provision of health services to inmates so long as availability consistent with in-person care
• Could raise some HIPAA concerns depending on circumstances surrounding use of tele-medicine

• Policies should outline how to interact with in-person services

• Consult individual state law
Medication Assisted Treatment (MAT)
Background

• Medication Assisted Treatment a/k/a Medication for Addiction Treatment is becoming the medical standard of care to treat opioid use disorder, utilizing FDA-approved medications like methadone or buprenorphine

• Questions raised when state prisons and local jails deny MAT to inmates
MAT 101

Medication Assisted Treatment is an innovative, pioneering program. But what exactly is it?

**Medication**

Medications—including methadone, naltrexone and buprenorphine—are given to inmates.

**Assisted**

The medication assists by curbing opioid cravings, allowing inmates to focus on reentry and rehabilitation.

**Treatment**

Like with anxiety, cholesterol or high blood pressure, the medication is a part of an overall treatment plan to help manage symptoms.
Background

• Institutional concern about use of serious and unique medication treatment balanced against effort to overcome addiction in controlled manner

• Eliminates dramatic withdrawal which often leads to serious medical concerns or risk of suicide
Institutional concerns

• Degree of sophisticated medical services available
• Necessary to have appropriate medication management
• Denial of treatment to inmate who had started therapy could be considered constitutional violation
Institutional concerns

• Inexperience with therapies could result in inconsistent results
• Lawsuits seeking injunctive relief to mandate this treatment now appearing
  ▪ Smith v. Aroostook County, 376 F. Supp 3d 146 (D. Main, 2019), aff’d per curiam 922 F.3d 41 (1st Cir. 2019)
  ▪ Crews v. Sawyer (9/7/19 Dist. Ct. Kansas)
Recap

- Looked at federal, state, constitutional claims
- Examined cases and outcomes related to medical care, suicide, solitary confinement
- Talked about the pros and cons of technology on inmate and officer safety including:
  - Full-body scanners
  - Body worn cameras
  - Telehealth
  - Medication Assisted Treatment
- Sample policies
Questions or comments?
Thank you for your courteous attention!

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