PRIMA 2014
WEBINAR SERIES

Public Safety Operational Liability Issues and Controls

Enforcement in corrections facilities and jails

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Overview

Law enforcement exposures and controls in prisons and jails are ever-changing and evolving, from conditions of confinement to use of force to providing the same care of treatment whether it be for medical or mental health illnesses.

Today we will look at recent claim cases and provide a brief historical perspective. The presenters will take a closer look at the current and emerging issues with an emphasis on what controls to consider to reduce exposures to allegations from the inmates and the general public.

Presenters



Mike Wiederhold
Vice President
Specialty Markets
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Beth Capek, AIC, ARe
Vice President, Claims
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Munich Re America



Ric Bishop
Jail Administrator
Consultant

Overview

Our goals for attendees are to:

- Identify the unique liability issues of prisons and jails
- Understand the emerging liability and control issues of prisons and jails
- Identify ways to reduce exposures
- Understand how to deal with allegations from the inmates and the general public

Presenter: Beth Capek



Elizabeth Capek serves as a Vice President in the Chicago Branch Claim office of Munich Reinsurance America, Inc. Beth is responsible for handling Specialty Markets accounts. She works extensively with self-insured's and TPAs and participates in auditing clients and potential client's claim operations.

Beth earned a Bachelor of Science in Business/Finance from Eastern Illinois University and holds AIC and ARe designations. She recently earned the RAA Scholar certification and is currently pursuing completion of her CPCU.

Presenter: Ric Bishop



Richard Bishop is a jail administrator in the Pacific Northwest where he is responsible for overall jail operations and administration of two jail facilities; 825 beds; employing 170 staff. His experience includes capital and operating budgets; professional standards; jail operations; medical unit operations; staffing; and implementation of new programs.

When not working on public safety projects at the local or state level, Mr. Bishop owns and operates a consulting business, providing jail risk inspections for public and private entities.

Agenda

- Case Examples
- Use of Force in Jails
- Providing Medical and Mental Health Treatment
- Sexual Abuse–PREA
- Questions

Law Enforcement Case Examples

Taser

Class action suit against Franklin County, OH for inappropriate use of tasers.

Deputies in Franklin County, OH were accused of violating prisoners' constitutional rights by unnecessarily using tasers on them in a "callous and sadistic manner." Many of the inmates had disabilities. A settlement of US$ 1.2m was reached in 2013.

Sexual sssault

Delaware County, OK sued for US$ 13.5m by former female inmates alleging sexual assault.

Fifteen former female inmates alleged in a complaint they were raped, sexually assaulted and fondled by their jailers.

Law Enforcement Case Examples

Mental health

Hennepin County, MN- Inmate stabbed himself after being incarcerated for 40 days without any psychiatric care. The case was settled for US$ 1m.

Medical care

Sutter County, CA - Repeated pleas for medical attention went unanswered. The inmate died after a six-day stay in the jail in January 2011. The “Prasad” case was one of two court cases that pushed county officials to revamp their medical and mental health care inside the jail and to pay out more than US$ 1.6m in settlements to the Prasad family and the family of another deceased inmate.

Overview

The Court must examine the effect upon inmates of the conditions of the 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, education and rehabilitative programming); and staffing (trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other inmates)…when the cumulative effect of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates and/or creates a probability of recidivism and future incarceration, court must conclude that the conditions of confinement violate the constitution.

Rhodes v. Chapman - 452 U.S. 337 (1981)

Use of Force in Jails—Historical

Use of force in jails has traditionally been viewed differently than use of force by law enforcement working the streets.

Use of force in the jail was allowed to restore or maintain order as established by **Whitley v. Albers, 475 US 312 - Supreme Court 1986.**

Use of Force in Jails—Current

The courts are now taking a step back and asking questions regarding:

- Corrections can no longer simply justify use of force to “restore or maintain order”
- Look at alternatives
- Consider secondary injuries
  - Targeting area
  - Landing zone

Use of Force in Jails—Current

Why tasers?

- When used properly, reduces injuries to inmates
- Reduces injuries to staff
- Avoids physical altercations by the mere presentation or display

Use of Force in Jails—Loss Control Measures

Before tasers are issued for use, update the agency Use of Force policy and procedure. The policy may include, but is not limited to:

- The circumstances for proper use and nonuse (example may include when an inmate is handcuffed)
- Require all staff be trained by a certified instructor
- Institute periodic retraining of staff as required by the manufacturer
- Mandate reporting of all incidents when a taser is ***DISPLAYED OR DEPLOYED***
- Require all incident reports be reviewed by a supervisor
- Maintain a separate policy for corrections versus law enforcement
- Refer to taser International for Model Policy
- Dedicate resources to monitor case law

Medical in Jails—Historical

The requirements to provide medical care to convicted inmates, has been established in **ESTELLE v. GAMBLE, 429 U.S. 97 (1976)** and subsequent cases. Claims of failing to provide adequate medical care to convicted inmates fall under the 8th Amendment.

For pre-trial inmates, requirements to provide medical care have been similarly established under **BELL v. WOLFISH, 441 U.S. 520 (1979)** and its subsequent case law. Failure to provide adequate medical care fall under the 14th Amendment.

Medical in Jails—Historical

When operating a jail facility, there is no difference in these standards, you are required to provide adequate medical care.

Deliberate indifference

1. Knew of the serious medical need
2. Deliberately failed to act
3. Knew the inaction could cause harm
4. Harm occurs

Medical in Jails—Historical

This does not mean that a difference of opinion over treatment by an inmate or family are grounds for a constitutional claim.

The courts and community partners have taken a dim view of jurisdictions who release inmates in critical medical conditions to avoid medical costs.

Medical in Jails—Loss Control Measures

Review and update policy and procedures to include, but not limited to:

- A detailed process outlining how medical care is provided in the jail
- Mandate all staff be trained in addressing life threatening medical emergencies, (contacting Emergency Medical Services)
- Use only licensed medical professional, practicing within their scope of licensure, to provide medical care
- Require a registered nurse (RN) to triage at intake

Medical in Jails—Loss Control Measures

- Partner with Community Health Department for medical services
- Practice telemedicine (if allowed under state law and licensure)
- Implement a grievance system to report medical care issues
- Interact with families and inmate advocates
- Dedicate resources to monitor case law

Mental Health in Jails—Historical

February 5, 1963:

President Kennedy addressed Congress on mental illness and mental retardation. He proposed a new program under which the federal government would fund community mental-health centers (CMHCs), to take the place of state mental hospitals.

As Kennedy envisioned it, "reliance on the cold mercy of custodial isolations will be supplanted by the open warmth of community concern and capability."

Mental Health in Jails—Historical

October 31, 1963, President Kennedy signed the Community Mental Health Act.

The legislation did help to usher in positive life-altering changes for people with serious illnesses such as schizophrenia, many of whom now live normal, productive lives with jobs and families….but only half the proposed centers were ever built, and those were never fully funded.

Mental Health in Jails—Historical

In 1955, there was one psychiatric bed for every 300 Americans.

In 2005, there was one psychiatric bed for every 3,000.

It is now extremely difficult to find a bed for a seriously mentally ill person who needs to be hospitalized.

Mental Health in Jails—Current

In 2012, there were approximately 356,268 inmates with severe mental illness in prisons and jails.

There were also approximately 35,000 patients with severe mental illness in state psychiatric hospitals.

Therefore, the number of mentally ill persons in prisons and jails was **10 times** the number remaining in state hospitals.

Mental Health in Jails—Current

Risks to jail operations:

- Deteriorating condition
- Longer length of stay
- Violent behavior
- Clean up of biohazards
- Consume additional resources

Mental Health in Jails—Loss Control Measures

Review policy and procedures to include but not limited to:

- Implement measures to divert the mentally ill from the jail
- Require Crisis Intervention Training – corrections environment
- Mandate staff training on how to recognize and interact with people in a mental health crisis
- Use mental health counselors
- Partner with local advocates (NAMI), courts, prosecuting attorney, defense attorney, community resources on release (Discharge Plan)
- Interact with families and inmate advocates
- Dedicate resources to monitor case law

Sexual Misconduct in Jails—Historical

Prison Rape Elimination Act (PREA) of 2003

Key Points:

- Establish zero tolerance for prison rape
- Make prevention of prison rape a top priority
- Develop and implement standards for detection, prevention, reduction and punishment of prison rape

Sexual Misconduct in Jails—Current

- US Department of Justice Final Rule (2012)
- Resistance
- Debate
- Wait and see approach
- Increasing risk of litigation
- Frustration of PREA Commission

Sexual Misconduct in Jails—Loss Control Measures

Update policies and procedures to include but not limited to:

- Mandate zero tolerance for sexual abuse
- Require extensive staff training
- Include key steps such as a classification system and protective custody to prevent sexual abuse
- Include such measures as notification of rights and avenues of report for inmates, cameras, posters etc. to aid in the detection of abuse
- Conduct thorough investigations – mandate that law enforcement be trained in sexual assault, require meticulous evidence gathering
- Partner with prosecuting attorney, rape advocate and mental health counselor (PTSD issues) prosecution and aftercare
- Hire a PREA auditor to conduct an audit
- Monitor case law

Ongoing & Future Jail Risk Exposure

- Conditions of Confinement
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Isolation (Administration Segregation)
- Housing of Transgender

Questions?

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