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Major Civil Litigation against Municipal Jails and Ways to
reduce your Liability

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Abstract

Nowhere in policing today is the liability greater than medical issues in the municipal jails. In Arlington, Texas, medical issues concerning inmates have skyrocketed and become one of the major sources of complaints today. As much as 75% of complaints and litigations derive from issues in jails. The City of Arlington has taken steps to lessen the chances of litigation.

The purpose of this paper is to research the history of medical issues concerning inmates, review specific issues pertaining to medical issues with inmates and develop specific procedures to lessen the chances of municipal jails being sued by inmates for lack of medical attention.

History has shown that jails and prisons can be held liable for inmate medical care if, the inmate can prove under the Eight Amendment, "Cruel and unusual" punishment. Jailers and prison guards must show "deliberate indifference" in order for an inmate to win a 1983 lawsuit. The standard in tort cases is much lower. Tort law's standard is mere negligence.

Short-term facilities are usually not held responsible for more than the maintenance of inmates at their present level of health, stabilization and treatment of emergencies, relief of pain, avoidance of loss of limb or function and prevention of contagion. Issues to be considered in handling inmate medical

issues are the officer's time, the lack of training of jail staffs pertaining to medical issues and the cost involved.

There are several things municipalities can do to reduce their liability concerning medical issues. First departments need to have clear, concise policies written on how to deal with medical issues. Jailers need to be trained on specific medical issues. Finally, municipalities should continue to look at alternative ways to acquire medical services for inmates. these methods could include using county hospitals, budgeting an amount to cover minor medical issues at clinics, to possible doctor or nurse house calls in the jail.

Introduction

*As long as people have been brought to jails, they have always complained and even sued cities for improper treatment concerning medical needs. Medical costs for inmates in Texas prisons totaled \$582 million last year. This averages about \$1,900.00 per inmate (Heimlich, p. 1). Health Care is big business when it comes to incarcerated inmates. This however is on the state level, not the local. Local jails do not have a budget to get inmates the treatment they may need. The municipal jails also do not house inmates for long periods of time. These two factors weigh heavily on the administrators in local governments.

The Eighth Amendment prohibits "Cruel and unusual" punishment. Toward this goal, the U.S. Supreme Court has ruled that a prisoner must show "deliberate indifference", by prison guards or administrators concerning medical attention, in order to win a section 1983 lawsuit. Deliberate indifference has been defined as official actual knowledge and disregard of an excessive risk of inmate health and safety. It is equated with the standard of criminal recklessness. Pain and suffering endured by a prisoner that was not part of his sentence does not violate his constitutional right, unless a prison official intended to allow the prisoner to suffer (LaBrec and Anderson, p.9).

Today litigation against municipal jails is at an all time high. Lawyers are making fortunes from cities which have their own jails. According to the Arlington City Attorney, Sam Goodall, approximately seventy five per cent of all civil suits against the City of Arlington and other municipalities concern incarcerated inmates. While The Commission on Jail Standards sets standards for county jails and prisons, it leaves municipal jails in the dark concerning guidelines to help keep them from litigation. A jail manager must be able to understand what the major liabilities are and how to reduce or prevent them. One of the major areas of civil litigation against municipal jails today is lack of proper medical treatment.

This paper will use police journals, specific books, the internet, personal interviews and legal opinions to show the reader that municipal jails must have standards similar to county jails and prisons regarding medical treatment of inmates.

The intended audience is police chiefs, jail commanders of Municipal Jails, jailers and attorneys.

The purpose of this policy research paper will be to inform the reader of the history of the problem with medical treatment of inmates, the specific problems related to medical treatment and municipal jails and specific actions that jail staff can do to reduce the chance of liability.

Historical, Legal or Theoretical Context

Research shows that medical issues in prisons and jails have always been a major problem. In the early part of the 1900's many prisons did not worry about the health of inmates. Prisons were located mainly in rural and distant communities; inmates were placed behind high walls. The practices, procedures, and services were protected from judicial review by a "hands off" attitude (Dubler, V) The prisons were filthy, overcrowded and no medical attention was given unless it was an extreme emergency. However, this began to change.

As early as 1906, state courts were holding that it was a sheriff's duty to the prisoner to exercise reasonable and ordinary care to protect the prisoner's life and health. In 1931 a Tennessee court held a sheriff liable for neglecting the wounds of a prisoner that he had carried to the jail in an injured condition. The prisoner died of this inattention and the sheriff was held liable (Barkin et al 190).

This idea of holding a sheriff responsible for a prisoner's health carried over to other states. For instance, in Oklahoma, in 1930, a sheriff was held liable for negligence for not calling a physician and not isolating a prisoner after smallpox was diagnosed. He was left in the cell with three other prisoners while a hospital room remained unused (Barkin et al 190).

As time moved forward this 'duty of reasonable care' was enforced strongly. In one of the more recent decisions, Farmer vs. State, a prisoner suffering from ulcers needed special medical attention and special foods. The prisoner died and his widow charged that the death was attributable to the negligence of the sheriff in not supplying adequate medical care (Barken et al 190). The court upheld the liability case and issued the following:

When a sheriff by virtue of his office has arrested and imprisoned a human being he is bound to exercise ordinary and reasonable care under the circumstances of each particular case for preservation on his life and health... for breach of such duty his is liable in damages (Barkin et al 190).

The specific, inferences in these cases is, that it is the states', sheriffs' or municipal jail commanders' responsibility to exercise due care when it comes to inmates and medical attention.

The State tort law and Section 1983 provide penalties against jail personnel who refuse or fail to provide adequate medical care. There is no constitutional right to medical services in the Constitution, but the absence or inadequacy of medical care is usually seen by the courts as indicative of cruel and unusual punishment in violation of the Eighth Amendment (Del Carmen 107).

In one of the more recent court cases, Estelle v. Gamble, the court held that "deliberate indifference to the serious medical needs" of an inmate constitutes cruel and unusual punishment and violates the Eight Amendment (Del Carmen 108).

The Eighth Amendment, which supports this constitutional right to care, is intended to protect and safeguard individuals "from an environment where degeneration is probable and self-improvement unlikely because of the conditions existing which inflict needless suffering, whether physical or mental" (Dubler, VI). Even though the courts use the standard of "deliberate indifference to the serious medical needs", the standard in tort cases is much lower. The tort cases use the standard that liability may ensue under state law if failure to deliver the proper medical service constitutes mere negligence (Del Carmen, 108). Because of the tort laws anyone who cares for incarcerated inmates must pay close attention to the inmates' medical needs and secure medical attention.

Every jail was therefore expected to provide an adequate level of medical care:

Many special prisoners are admitted with medical problems which do not require hospitalization, but which do require continuing medical attention. Prisoners may also develop medical problems requiring specialized treatment while they are confined. In all such cases, although the jail physician is responsible for the prisoner's care, the jailer also has a number of responsibilities (Barkin et al 86).

Because of the history of medical issues in prisons several procedures were developed to give direction to the jailers working in the institutions.

Review of Literature or Practice

As late as 1972, The American Medical Association expressed concerns about the lack of treatment for inmates. In a survey, of the responding jails, only 65.5 per cent had only first aid facilities, while 16.7 per cent had no internal medical facilities (AMA 11). These figures have drastically decreased since the survey. One of the driving factors about health care is the cost. The United States spends more on health care than any other nation in the world (Anno 118).

In the State of Texas, the Texas Commission on Jail Standards sets the guidelines for the States prisons and jails. It does not govern Municipal jails, however it did publish at one time a proposal for standards for Municipal Jails. Even though the legislation did not pass the proposal, it does give some excellent guidelines for Municipal Jails and health care. The Commission states that all jails must have a medical questionnaire that should be part of the inmate's record. The questionnaire shall include the following:

- a. Are you currently under a doctor's care?
- b. Are you currently sick or injured?
- c. Are you currently taking any medication.

If yes to any of the above, list what for and what medication (Standards 40)

The Commission also states that the jailer responsible for booking in the inmate must observe the inmate's behavior and record the findings. Even more defining for Municipal Jails are the Standards for Accreditation. A written directive, approved by a licensed physician, identifies the policies and procedures to be followed when a detainee is in need of medical assistance (Standards 72.4).

Even with the accreditation standards and the Texas Commission on Jail Standards as guidelines each individual Municipal Jail must set their own policies and procedures concerning inmate's medical needs. One basic rule for jailers is, if the law permits, a jailer should refuse to admit, without medical clearance, unconscious persons, persons who appear to have passed out from the effects of alcohol or drugs, and persons with more than clearly minor injuries (Barken et al. 86). According to Kenneth Faiver there are nine factors to consider in providing medical care to inmates.

1. Urgency of procedure
2. Necessity of procedure
3. Expected remaining duration of incarceration
4. Probability of successful outcome of treatment, including the risk of adverse side effects
5. Expected functional improvement as a result of the intervention
6. Patient's desire (expressed or implicit) for the intervention
7. Whether the intervention is for a pre-existing condition
8. Whether the intervention is a continuation of previous treatment for a chronic condition, or is the initiation of a new course of long-term treatment
9. Cost

Discussion of Relevant Issues

Determining whether an inmate really needs care, or is just using the system to cause friction is a major issue. There are many variables involved in determining whether or not an inmate needs medical care.

How badly is the care needed? How quickly is it needed? What will happen if it is not provided? How much does it cost? How long has the inmate had this condition? How did it happen? How long will the inmate remain in the correctional system? What other treatments are available

and how effective are they? How much does the patient want the care? What evidence has the patient shown that he or she will cooperate in the treatment process? Will the intervention bring significant improvement? How old is the inmate? Is it a prison or a jail? (Faiver, 69)

These issues are good but they usually pertain to prison and county jails. What about municipal jails? Are they under the same obligation to obtain medical attention as prisons? Jails for example, are short-term facilities and therefore usually are not held responsible for more than the maintenance of patients at their present level of health, stabilization and treatment of emergencies, relief of pain, avoidance of loss of limb or function, and prevention of contagion (Faiver, 69). According to Faiver, not every request for medical attention must be granted (Faiver, 72). The jail managers today have to be very careful when dealing with medical issues. If costly care is given, it will be labeled an "extravagance." If it is denied it will be called "inhumane" (Faiver, 77).

If a jail commander decides to deny medical care, there are several factors he should consider. These factors include: urgency of the procedure; necessity of the procedure; expected remaining duration of incarceration; inmates desires and cost. A weight must be placed on these categories to help make your decision (Faiver, 77). The right to treatment is, of course, limited to that which may be provided at a reasonable cost and on a timely basis and the essential test is one of medical

necessity and not simply that which may be considered merely desirable (Dubler, VIII). In smaller jails with no designated jail doctor, contractual care, should be arranged with a local physician for services as needed, emergencies, and to visit the jail on a regular schedule to conduct sick call (Jansen, 99). There are two methods of sick call lines. One is to deliver the inmates to the infirmary or dispensary. The other is to have the medical personnel go to the housing areas where the complaints are taken and treatment or medication is given (Jansen, 102).

One of the biggest constraints on Municipal Jails concerning medical care is the police officer themselves. If an inmate needs medical attention it will be at the officer's expense. The patrol officer who wants to be on the front line battling crime finds himself sitting in the emergency room or clinic for lengthy periods of time. Their frustration is usually taken out on the jail staff. Another problem is a lack of training for jail staff members concerning medical issues. Many jailers are relying on their own common sense to determine if the inmate truly needs medical attention or not. When they are not sure the answer is to ignore the inmate's pleas. Another issue is the cost of providing inmates with medical attention. Is it easier to provide payment for an inmate to a clinic and get the officers back on the street quicker? This

cost could run a department several thousand dollars in a year's time.

With all the information about medical issues jail administrators must access many various issues before determining their decisions.

Municipal Jails are defined as short-term facilities and therefore, usually are not held responsible for more than the maintenance of patients at their present level of health, stabilization and treatment of emergencies, relief of pain, avoidance of loss of limb or function, and prevention of contagion (Faiver 69). Municipal Jails are at a great disadvantage when it comes to medical issues. They must rely on trends and court decisions pertaining to jails and prisons. Through these decisions today's jail managers can learn to make good legal decisions concerning medical issues. Recent litigations have forced Municipal Jails to adopt policies and procedures for two basic reasons: to keep the inmate safe and to reduce chances of litigation.

Conclusion / Recommendations

Municipal Jails should learn from the history and past litigations concerning jails and prisons. Since the courts have directed jails and prisons to provide care and custody for their inmates, municipal jails should anticipate having to do the same

or face civil litigation. There are several things that a municipal jail can do to reduce its liability concerning medical issues.

One of the first things a municipal jail can do is to have clear concise policies written on how to deal with medical issues. A directive needs to specify the inmates' right to medical treatment. Jail detainees shall receive information regarding their right to medical treatment at the time of incarceration (Arlington S.O.P. 13.002). The directive also needs to give direction to the jailers on what to do for indigent inmates who need medical attention.

Jail inmates who request medical treatment for pains and/or ailments that are not readily visible and who have neither sufficient funds to pay for treatment nor medical insurance, in circumstances where the Jail Supervisor can reasonably determine is minor ailment may be treated at a local minor emergency facility. Uncooperative inmates or extreme security risks should not be considered for treatment at a minor emergency facility (Arlington General Orders 406-6)

Another issue to be addressed is training for jail personnel. All jail personnel must be trained medical issues. They must know when they should get medical attention quickly and when they can transfer the inmate to a emergency medical clinic. A training program is established by the responsible health authority in cooperation with the facility administrator, and provides instruction in the following areas:

- The ability to respond to health-related situations within four minutes
- Recognition of signs and symptoms, and knowledge of action required in potential emergency situations
- Administration of first aid and cardiopulmonary resuscitation
- Methods of obtaining assistance
- Recognition of signs and symptoms of mental illness, retardation, emotional disturbances and chemical dependency
- Procedures for patient transfers to appropriate medical facilities or health care providers (ACA 71).

If a municipal jail will follow these guidelines they should be able to reduce their liability concerning medical issues. Jail Administrators should learn from the other institutions and prepare their jail staffs on how to deal with medical issues.

History

Prisons in 1906

- **Locations**
- **Conditions**
- **Early Litigations**
 - **1906 Reasonable and ordinary care**
 - **1931 Tennessee Case of Negligence**
 - **1930 Okla. Case Negligence**
 - **Small Pox and Contamination**

Tort Cases

Standard is less than 8th Amendment

Mere negligence in regards to medical

Issues to consider

Can a Municipal Jail Commander refuse medical treatment

How do you determine if you need to get the inmate treatment?

Options for treatments

Medical Costs in Texas Prisons totaled 582 million last year

Eighth Amendment: An inmate must show deliberate indifference concerning medical attention

Approximately 75% of litigations against Cities are related to incarcerated persons.

Commission on Jail Standards addresses Prisons and County Jails but does not apply to Municipal Jails

This paper will:

Give a history of medical issues in jails

Relate specific problems for Municipal Jails

Define actions Municipal Jails do to reduce liabilities

Bibliography

Anno, Jaye., The Cost of Correctional Health Care: Results of a National Survey. Journal of Prison & Jail Health Vol. 9 No. 2

Barkin, Eugene., et al., eds. The Jail: It's Operation and Management. Library of Congress, 1973

Del Carmin, Rolando V., Texas Jails Law and Practice. Sam Houston Press, 1990

Drapkin, Martin, Developing Policies & Procedures for Jails. Baltimore, MD.: American Correctional Association, 1996

Dubler, Nancy N., Standards for Health Services in Correctional Institutions. Washington, D.C.: American Public Health Association, 1986

Estelle v. Gamble, 429 U.S. 97 (1976)

Faiver, Kenneth L., Health Care Management Issues in Corrections. Maryland: American Correctional Association, 1998

Farmer v. State, 79 So.2d 528, 224 Miss. 96 (1955).

Heimlich, Janet, Rx for Scandal. Texas Monthly, June 1998

Jansen, Francis O. and Ruth Johns, Management and Supervision Of Small Jails. Springfield, Ill.: Charles C. Thomas, 1978

LaBrec, David J. and Katie Anderson, Prison and Jail Litigation. Dallas, Tx.: Government Litigation Practice Group

National Sheriffs' Association, Manual On Jail Administration. Washington, D.C., 1970

Standards for Adult Local Detention Facilities. Laurel, MD. American Correctional Association

Wayson, Billy L., et al., ed. Local Jails. D.C. Health and Company, 1977

American Medical Association, Medical Care in the U.S. AMA 1972

Arlington General Orders, Arlington Police Department

Standard Operating Procedure, Arlington Police Department

Texas Commission on Jail Standards, A Proposal for Municipal
Jails, 1987