Coronavirus in the Jails

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Introduction

- Brief History of Covid-19 in Jails
- Response to Pandemic
- Vaccine Distribution
- Litigation Resulting from Covid-19
- Legal Standard
- Defending Future Litigation

Brief History of Covid-19 in Jails

- Covid first emerged in China in late 2019.
- Covid is predominantly spread by respiratory droplets and contact.
- Spread is similar to seasonal flu.
- Methods to avoid infection include:
  - Basic hand hygiene
  - Cough etiquette
  - Wearing face masks
  - Maintain social distance

Brief History of Covid-19 in Jails

- Severe cases develop pneumonia and respiratory failure.
- Deaths generally occurred in older people and those with underlying health conditions.
- People in congregant living conditions, like custody facilities, are at greater risk of becoming infected.

Covid-19 Data in the United States

- As of April 8, 2021, 30,737,477 total cases have been diagnosed.
- As of April 8, 2021, 556,106 of these cases have resulted in death.

Covid-19 Data in Prisons

- According to the Marshall Project, a nonpartisan, nonprofit news organization focused on the U.S. criminal justice system, as of April 6, 2021:
  - 392,493 cases of Covid-19 have been reported among prisoners
  - 2,516 deaths have been reported due to Covid-19 among prisoners
  - 108,186 cases of Covid-19 have been reported among staff
  - 198 deaths have been reported due to Covid-19 among staff
- Note that this data **does not include data from local jails.**

Response to Pandemic

- As the pandemic spread during the Spring of 2020, jails came under increasing pressure to respond.
- Requests were made by various inmate advocacy groups to reduce jail population by 50% or more. Tension existed between the need to reduce jail capacity and public safety.
- Responses had to be tailored to each specific County and each jail. Given jail populations, the need for additional space became critical.

Response to Pandemic

- CDC issued guidelines regarding jail operations including:
  - Hygiene of Inmates
  - Mask Wearing by Inmates
  - Social Distancing of Inmates
  - Cohorting of Inmates
  - Visitation
  - Cleaning Protocols of Facilities

Vaccine Distribution in Jails

- Vaccine development began soon after the identification of the Covid-19 virus (SARS-CoV-2).
- A vaccine developed by Pfizer and BioNTech was granted Emergency Use Authorization by the FDA on December 11, 2020. The efficacy of this vaccine was 95%
- A vaccine developed by Moderna was granted Emergency Use Authorization on December 18, 2020. The efficacy of this vaccine was 94.5%
- A vaccine developed by Johnson & Johnson was granted Emergency Use Authorization on February 27, 2021. The efficacy of this vaccine was 66.9%

Vaccine Distribution in Jails

- Pressure was brought to bear by various advocacy groups to vaccinate inmates prior to the general public.
- Limited supply and overwhelming demand created further stress.
- Finally, political issues existed regarding providing vaccine to inmates rather than the general public.
- As supply of vaccine increased, vaccination of inmates was offered.
- Education of inmates regarding the benefits of the vaccine was provided.
- Most inmates accepted the vaccine.

Impact of Covid Protocols on Jail Operations

- The impact of Covid protocols on Jail Operations is significant. These include:
  - Reduced jail capacity to allow for social distancing
  - Reduced or eliminated visitation
  - Reduced or eliminated educational and religious opportunities
  - Changes to meal protocols
  - Reduced or eliminated access to mental health treatment

Impact of Covid Protocols on Jail Operations

- Changes to transportation to specialty medical appointments outside the facility
- Changes to cleaning protocols
- Requiring inmates and staff to wear masks
- Testing of inmates
- Testing of staff
- Vaccination of inmates
- Vaccination of staff

Play Video

- Play Covid019 in California Prisons

Legal Requirements to Provide Medical and Mental Health Care

- Estelle v. Gamble, (1976) 97 S.Ct. 285
- Inmate injured while working on prison work assignment
- Between the date of the injury (November 9) and February 9, he was seen by various health care providers 17 times. He then filed a lawsuit.

Legal Requirements to Provide Medical and Mental Health Care

- The obligation to provide medical care is rooted in the Eighth Amendment. "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met."
- We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” proscribed by the Eighth Amendment.

Future Litigation

- In the last 12 months, nearly 300 cases nationwide have been filed arising from jails and prisons related to complaints involving Covid-19.
- Litigation has included claims for early or compassionate release to allow for increased social distancing in facilities.
- Future litigation will likely be based on failure to provide adequate medical care and failure to protect.

Future Litigation

- Additional litigation arising out of response to pandemic:
  - Denial of compassionate/early release requests
- Added cost for:
  - Additional programming & recreation
  - Additional staffing
  - Additional cleaning supplies
  - Additional PPE
  - Covid testing

Defense Tips on Future Litigation

- Maintain records of all responses to Covid pandemic
  - Reduction in jail population
  - Changes to cleaning protocols
  - Social distancing requirements
  - Mask wearing requirements
  - Testing & Vaccination protocols
  - Changes to educational and religious opportunities
  - Changes to Mental Health and Medical treatment
  - Changes in transportation protocols
  - Illogical jail/prison practices, policies and procedures
- Keep future litigation in mind when responding to concerns in individual criminal matters.

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QUESTIONS?