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Mental Health Care of Prisoners

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Introduction

Prisons and jails are legally required to provide adequate medical treatment to prisoners and detainees. This obligation covers not only general medical and dental services but also encompasses mental health assessment and treatment.

This aspect of correctional health care is becoming daily more burdensome, and a failure to take it seriously and develop plans and policies for systematically handling it may result in significant civil liability, and even, in drastic circumstances, in federal or state courts launching major interventions into facility management.

Purported shortcomings in medical services provided, including mental health services, was one important component cited by a three-judge federal court panel that recently ordered the California prison system to reduce its prison population of 150,000 by approximately 40,000 or 27% within a two year period. [Coleman v. Schwarzenegger](#), #CIV S-90-0520, 2009 U.S. Dist. Lexis 67943 (E.D. Cal., three judge court).

A significant number of detainees and prisoners require mental health care. [Statistical studies](#), for example, have estimated that approximately 17% of new jail inmates may have serious mental illnesses, and that as many as 2 million bookings of people with serious mental illnesses may occur each year.

This article briefly examines some of the many cases in which courts have addressed claims of inadequate mental health services provided in jails and prisons. A prior article in this publication addressed these issues in the context of [prisoner suicide](#), and another such article addressed issues concerning the [forced medication and feeding of prisoners](#) who

decline to accept anti-psychotic medicines or go on hunger strikes, so those issues will not be examined here.

At the conclusion of the article there are some listings of related articles previously appearing in this publication and other relevant resources and references available elsewhere on the Internet.

Mental Health Care of Prisoners

Both class action lawsuits on behalf of groups of mentally ill prisoners and lawsuits by individual prisoners suffering from mental illness have resulted in large liability awards in specific cases.

In [D.M. v. Terhune](#), #96-1840, 67 F. Supp. 2d 401 (D.N.J. 1999), for instance, the state of New Jersey reached a wide-ranging \$16 million settlement in a lawsuit over allegedly inadequate treatment of mentally-ill prisoners and disability discrimination against them. Among other things, the settlement provided that the plaintiffs' attorneys were to receive \$1.22 million in attorneys' fees, disciplinary policies were to take prisoners' mental illness into account, and all new prisoners were to receive mental health assessment within 72 hours of their incarceration.

In [Gibson v. Moskowitz](#), #07-1074, 523 F.3d 657 (6th Cir. 2008), a psychiatrist's deliberate indifference was found to have caused a mentally ill prisoner's death from severe dehydration he experienced after he was kept in a 90 to 100 degree observation room for several days. A jury awarded \$2 million in compensatory damages and \$3 million in punitive damages. The compensatory damage award was reduced to \$1.5 million.

A federal appeals court rejected arguments that the remaining damage awards were excessive, and found that there was sufficient evidence for the deliberate indifference finding, as well as a medical malpractice claim.

Deliberate indifference to a known serious medical need is the legal standard for liability. Applying that standard in [Vaughn v. Gray](#), #07-2921, 557 F.3d 904 (8th Cir. 2009), the court found that jail employees were not entitled to qualified immunity in a lawsuit contending that they were deliberately indifferent to the serious medical needs of a prisoner with mental problems, resulting in his death. The complaint alleged that the prisoner's mother brought his anti-depression medicine to the jail, that he received it until it ran out, and that his new prescription was not available until two days later. When the prisoner's cellmate informed an employee of the sheriff's department that the prisoner had been engaging in odd behavior and swallowing shampoo, a reasonable jury could conclude that the defendants knew that he needed medical attention, but acted with deliberate indifference to that need.

What is “deliberate indifference” in the context of failure to provide adequate medical treatment? It is making a conscious knowing choice from available alternatives (of which doing nothing is certainly one), after consideration, with an appreciation of the possible negative consequences to inmate health. To find deliberate indifference, there must have been an awareness of the serious medical needs of the prisoner, along with the time to consider alternatives. This is a fairly high standard of culpability which must be found to impose civil liability for a federal civil rights violation for inadequate medical care. A lower standard of negligence applies to medical malpractice actions under state law. Mere negligence will not suffice for civil rights liability.

Most cases imposing civil rights liability for inadequate mental health care have been a result of a partial or total failure to adequately train or manage personnel charged with providing such care, and/or an inadequate system or provision for mental health services, such as the failure to devote adequate resources to providing them. It is also very important to note that a correctional system cannot avoid civil rights liability for providing inadequate mental health care services simply by delegating the providing of such care to a private entity. Despite such delegation, the correctional agency still bears the ultimate responsibility for inmate medical care.

Mere disagreements over the appropriate treatment to be provided will be insufficient to impose liability. In Jaquez v. Newell, #07-CV-498, 2009 U.S. Dist. Lexis 15964 (N.D. Ok.), a prisoner failed to show that there was a genuine issue concerning whether he was provided inadequate treatment for mental health problems. He was provided with psychiatric medications within 30 days of his arrival at a county jail. His lawsuit demonstrated merely a disagreement with the course of treatment provided, rather than deliberate indifference to serious medical needs.

Claims for inadequate mental health treatment are subject to the requirement, under the Prison Litigation Reform Act, 42 U.S.C. Sec. 1997e(e), that the prisoner show physical injury before being able to recover money damages for mental injuries. In Chatham v. Adcock, #07-14995, 2009 U.S. App. Lexis 13731 (Unpub. 11th Cir.), for instance, the appeals court held that injuries a prisoner allegedly suffered from withdrawal from Xanax, which he claimed included hallucinations, nausea, anxiety, and fluctuating blood pressure, did not satisfy the requirement that he show physical injury before being able to recover damages for mental injuries. At the time, the plaintiff prisoner himself only complained of cold symptoms and "agitation." Additionally, because medical personnel provided other psychotropic medication during his Xanax withdrawal, they were not deliberately indifferent to his serious medical needs

In a class action over alleged inadequate mental health care of inmates at a county jail, the plaintiffs failed to define in "reasonably particular" detail, what adequate mental health screening would be or a system for delivering medications, and that injunctive relief concerning the treatment of the class was manageable and "conceivable," in light of the

individual characteristics and circumstances of class members, including the severity and nature of their mental illnesses. Class certification was therefore properly denied. [Shook v. Board of County Commissioners, County of El Paso](#), #06-1454, 543 F.3d 597 (10th Cir. 2008).

For liability, the untreated or inadequately treated mental illness must be shown to be serious. In [Tsakonas v. Cicchi](#), #07-4115, 2009 U.S. App. Lexis 1856 (3rd Cir.), an inmate failed to establish a claim for inadequate medical treatment, as he was examined by a number of mental health providers while incarcerated, as well as being provided with treatment for a number of physical ailments. His medical needs were not "serious," he suffered no long-term effects from any delay in treatment, and he never complained about his treatment while at the prison.

In [Page v. Norvell](#), #96-1702, 186 F. Supp. 2d 1134 (D. Ore. 2000), in contrast, a prisoner's mental health disorder, diagnosed as bipolar disorder, was found to be sufficiently serious so that deliberate indifference to his resulting medical needs, including anxiety he allegedly suffered due to a lack of medication review, would violate the Eighth Amendment. Further proceedings ordered as to whether manager of counseling treatment services purposefully misdiagnosed prisoner's mental illness or denied medication review.

Finding that the medical need is serious, however, is merely the first step in the evaluation of whether liability may be imposed. Deliberate indifference to that need must still be demonstrated. In [Goodrich v. Clinton County Prison](#), #04-3741, 2007 U.S. App. Lexis 1148 (3rd Cir.), for instance, while a prisoner suffering from a bipolar disorder and severe depression showed that he had serious medical needs, he failed to show that a mental health counselor acted with deliberate indifference to these needs by denying him medication after learning from a psychiatrist that he had been self-medicating himself. The counselor made a good-faith effort to determine whether the inmate's symptoms justified medication and allegedly determined that they did not.

Some mentally ill detainees may, at times, be held subject to civil commitment orders. In [Hicks v. James](#), #06-6786, 2007 U.S. App. Lexis 28251 (4th Cir.), the appeals court found that a federal civil detainee sufficiently presented a claim that prison employees acted with deliberate indifference to his mental health needs by denying him needed psychiatric treatment despite his deteriorating condition, which went beyond mere negligence in care. As a civil detainee, his claims were analyzed under the due process clause of the Fifth Amendment, rather than under the Eighth Amendment's prohibition on cruel and unusual punishment. The detainee was confined under 18 U.S.C. Sec. 4246(a), providing for the hospitalization (and continued detention) of a person in the custody of the Bureau of Prisons when their sentence is about to expire or when criminal charges against them have been dismissed on the basis of their mental condition, if they suffer from a mental disease or defect as a result of which their release would create a "substantial risk of bodily harm to another persons or serious damage to property of another."

In some instances, courts have premised possible liability on the failure to conduct needed screening of prisoners that would have arguably resulted in uncovering the existence of serious mental illnesses requiring treatment. See [Gibson v. County of Washoe, Nevada](#), #99-17338, 290 F.3d 1175 (9th Cir. 2002), ruling that the widow of a manic depressive detainee who suffered a heart attack and died while in custody could pursue a claim that a county policy of delaying medical screening of combative inmates constituted a substantial risk of serious harm to the decedent.

Mentally ill prisoners may, at times, attempt to base possible liability of correctional employees or agencies on legal theories of disability discrimination, rather than or in addition to inadequate medical treatment. One such claim was rejected in [Winters v. Arkansas Dep't of Health & Human Servs.](#), #06-2787, 491 F.3d 933 (8th Cir. 2007). In a lawsuit over the death of an allegedly mentally ill pretrial detainee while in custody in a county jail, the plaintiff failed to show that the decedent had been discriminated against because of his alleged disability of mental illness or that there had been deliberate indifference to his serious medical needs.

There was also no proof of an official policy or custom of depriving mentally ill detainees of needed medical treatment. The cause of the detainee's death was a previously undiagnosed physical ailment of "peritonitis due to a perforated ulcer," and the prisoner's mental illness may have rendered meaningful communication with the medical personnel who treated him "almost impossible." In the absence of accurate information from the patient, the medical personnel were denied information that might have aided in their ability to timely diagnose the perforated ulcer.

In [Atkins v. County of Orange](#), #01-Civ-11536, 251 F. Supp. 2d 1225 (S.D.N.Y. 2003), the court ruled that mentally ill county jail inmates could not pursue their claims for disability discrimination against the county and county officials based on alleged degrading treatment. They failed to show that they were denied the benefits of any services, program or activity of the jail, or that violent and self-destructive inmates who were mentally ill were treated any differently than violent and self-destructive inmates not suffering from a mental illness.

See also [Atwell v. Hart County, Kentucky](#), #03-6421, 122 Fed. Appx. 215 (6th Cir. 2005), ruling that a detainee suffering from paranoid schizophrenia, acute psychosis, impulse-control disorder, and "polysubstance abuse" could not assert disability discrimination claims since his impairments, because they could be corrected "or mitigated" by medication, did not constitute disabilities. Jail personnel did not use excessive force in using pepper spray to subdue him when he actively resisted his transfer to a hospital for treatment, and did not violate his right to receive adequate medical attention.

Liability may also potentially be premised on inadequate training with regards to handling mentally ill prisoners but must show that a policy or custom of such inadequate training actually caused injury to the prisoner. In Carey v. Helton, #01-5623, 70 Fed. Appx. 291 (6th Cir. 2003), the court held that the plaintiff failed to show that county had a policy of deliberate indifference in training correctional officers in the handling of mentally ill detainees, or that any such inadequacy in county's training caused detainee's death. No liability for county for the death of detainee from heart failure while incarcerated.

Other cases of interest in this area include:

- New York ex rel. Harkavy v. Consilvio, # 140, 859 N.E. 2d 508, 2006 N.Y. Lexis 3580, finding that New York state corrections law does not give prison superintendents authority to authorize the commitment of inmates who are sexual offenders to psychiatric hospitals in a unilateral manner. Prisoners are entitled, prior to such commitment, to procedural safeguards, including a right to be heard in court.
- Glisson v. Sangamon County Sheriff's Department, # 05-3250, 408 F. Supp. 2d 609 (C.D. Ill. 2006), finding that a detainee in a county jail presented a viable equal protection claim by alleging that the jail had a policy and practice of discrimination and that an officer there discriminated against him in his conditions of confinement because of his mental illness of bi-polar disorder.
- Moots v. Lombardi, # 05-1594, 453 F.3d 1020 (8th Cir.2006), stating that a bipolar prisoner who saw mental health staff, counselors, and doctors 38 times in a 13 month period failed to show that prison authorities acted with deliberate indifference to his serious medical needs, or retaliated against him for filing a grievance by pursuing misconduct charges against him or transferring him to another facility.
- Scarver v. Litscher, # 05-2999, 434 F.3d 972 (7th Cir. 2006), concluding that a schizophrenic prisoner who murdered fellow prisoner serial killer Jeffrey Dahmer and two other persons failed to show that prison officials at a Supermax facility knew that the heat in his cell, the constant illumination there, and the denial of his request for audiotapes to "still the voices" in his head were making his mental illness worse.
- Atkins v. County of Orange, # 01CIV.11536, 372 F. Supp. 2d 377 (S.D.N.Y. 2005), finding that a mere three-day delay between the date a prisoner was incarcerated in a county jail and the date she was seen by a psychiatrist did not establish deliberate indifference by the County or its Commissioner to her serious medical needs. Evidence in the record showed that she was seen by mental health personnel

whenever she requested, and that problems with her medication were remedied as soon as those problems were brought to the attention of medical personnel.

- [Williams v. Nelson](#), #04-C-774C, 398 F. Supp. 2d 977 (W.D. Wis. 2005), in which the court ruled that a man detained by the State of Wisconsin as a sexually violent person failed to show that he was provided with constitutionally inadequate mental health treatment. He failed to show that decisions about his treatment were either made by unqualified personnel or that his treatment was "outside the bounds" of acceptable professional judgment.
- [Hunnicut v. Armstrong](#), #04-1565, 152 Fed. Appx. 34 (2nd Cir. 2005), a case in which a federal appeals court held that a Connecticut prisoner's allegation that his meetings with mental health staff at the prison were conducted on the cell tier, within the hearing of other inmates, adequately stated a possible claim for violation of his right to privacy concerning his mental health issues under federal and state law.
- [Edmonds v. Horton](#), #03-6031, 113 Fed. Appx. 62 (Unpub. 6th Cir. 2004), finding that a jail doctor's decision not to put a pre-trial detainee on psychiatric medications after he attempted to swallow a razor blade was not deliberate indifference to a serious medical need. The doctor made a medical determination that the detainee was not psychotic, and had him placed in segregation and under close monitoring and supervision by the jail's mental health personnel.
- [Walker v. State of Montana](#), #01-528, 68 P.3d 872 (Mont. 2003), in which the Montana Supreme Court ruled that a prison's practice of subjecting certain inmates to behavior modification plans, along with the living conditions in the areas where such inmates were housed, violated the state constitutional right to "human dignity" of mentally ill prisoners and represented cruel and unusual punishment, especially when used as a substitute for medical treatment for disruptive and suicidal prisoner.

Resources and References

The following are a few useful resources on the topic of this article.

- Justice Center, The Council of State Governments, [Criminal Justice Mental Health Consensus Project website](#).

Related AELE Monthly Law Journal Articles:

- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.

- [Forced Feeding or Medication of Prisoners](#), 2007 (12) AELE Mo. L.J. 301
- [Civil Liability for Prisoner Suicide](#), 2007 (2) AELE Mo. L.J. 301.
- [Transsexual Prisoners: Medical Care Issues](#), 2009 (8) AELE Mo. L. J. 301.
- [Civil Liability for Inadequate Prisoner Dental Care](#), 2009 (9) AELE Mo. L. J. 301.

References (chronological):

- “[Prevalence of Serious Mental Illness Among Jail Inmates](#),” by Henry J. Steadman, Ph.D., Fred C. Osher, M.D., Pamela Clark Robbins, B.A., Brian Case, B.A., Steven Samuels, Ph.D., 60 *Psychiatric Services*. No. 6, p. 761-765 (June 2009).
- [Report on the Status of Services for Persons with Mental Illness in Maine's Jails 2000-2007: What Has Changed?](#) Source(s) National Alliance for the Mentally Ill (NAMI) Maine (Augusta, ME) Published 2007. 22 pages.
- [Mental Health Screens for Corrections](#) By Julian Ford and Robert L. Trestman; and Fred Osher, Jack E. Scott, Henry J. Steadman, and Pamela Clark Robbins May 2007 (National Institute of Justice, NIJ).
- "[A Corrections Quandary: Mental Illness and Prison Rules](#)," by Jamie Fellner, 41 *Harvard Civil Rights-Civil Liberties Law Review* No. 2, pg. 391 (Summer 2006).
- [Medicaid Benefits and Recidivism of Mentally Ill Persons Released from Jail](#), NIJ-Sponsored, May 2006, NCJ 214169. PDF
- [Psychiatric Disorders of Youth in Detention](#), OJJDP, April 2006, NCJ 210331. (16 pages). [PDF NCJRS Abstract](#)
- [Evidence-Based Enhancement of the Detection, Prevention, and Treatment of Mental Illness in the Correction Systems](#). NIJ-Sponsored, 8/2005, NCJ 210829. PDF
- "[Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders](#)," by Steadman, Henry J.; Naples, Michelle; Source(s): Policy Research Associates (Delmar, NY) Published 2005, 8 pages.

- [Screening and Assessing Mental Health and Substance Use Disorders Among Youth in the Juvenile Justice System: A Resource Guide for Practitioners](#) (NCJ 204956) December 2004 Report, 88 pages Grisso, T., Underwood, L. A.
- "[Ill-Equipped U.S. Prisons and Offenders with Mental Illness](#)" by [Human Rights Watch](#). (215 pages, October 2003).

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Bernard J. Farber
Jail & Prisoner Law Editor
P.O. Box 75401
Chicago, IL 60675-5401 USA
E-mail: bernfarber@aele.org
Tel. 1-800-763-2802

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