

# UNDERSTANDING JAIL DEATHS

**A GUIDE FOR FAMILIES SEEKING JUSTICE**

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# ACKNOWLEDGMENTS

I am grateful to the families who have trusted our firm to represent them in the most difficult of times. Their courage and determination to seek accountability inspire our firm's work. I also wish to acknowledge the dedicated team of the Law Offices of Dean Malone, P.C., whose commitment, competence, and compassion make our work possible.

# PREFACE

The loss of a loved one in a jail setting is devastating, confusing, and overwhelming. This book was written to help families understand the legal and practical issues that often arise in the aftermath of a jail death. My hope is that by providing this information, families will feel less alone and better equipped to navigate the road ahead.

Over the years, I and our law firm's hardworking team have represented families in cases involving jail deaths and witnessed firsthand systemic failures that contribute to these tragedies. While this book cannot provide legal advice or substitute for the guidance of an attorney, it is meant to serve as a resource—a starting point for families seeking answers, accountability, and justice.

It is my sincere belief that knowledge empowers families, and that reform is possible when voices are raised and truths are told. If this book helps even one family find direction in a difficult time, it will have served its purpose.

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## **CHAPTER 1:**

# WHAT TO DO IMMEDIATELY AFTER A LOVED ONE DIES IN JAIL



### **SPEAKING TO NEWS MEDIA**

People have different reactions when a loved one dies in a jail. Some people want to hide away and isolate, dealing with the horrific grief and loss alone. Other people feel the need to contact news media to shine as bright a light as they can on what they view as injustice. These people, while dealing with grief just as severe as those who choose to isolate, believe that contacting news media will help obtain justice for what occurred. Some family members who contact news media believe that they are waging a war to correct problems that resulted in the death, and that media coverage will help them obtain a measure of justice. Unfortunately, this is not always the case.

News media can at times do a good job of informing the public about something horrific that occurred, and changes that need to be made to avoid it from happening again. This is no different when a person dies in a jail by suicide, because of medical or mental health neglect, or from assault by another jail detainee. **However, it is our law firm's experience that contacting and talking to news media too quickly, whether it be through family members or a jail death attorney retained by the family, does not always have the desired effect. In fact, our law firm's experience handling jail death cases indicates that doing so can compromise, in at least a couple ways, any federal lawsuit regarding the person's death.**

**First, various open records laws, which are usually state laws as opposed to federal law, allow governmental agencies to keep from the public,** and family members of a person who dies in jail, information if the governmental agencies reasonably believe that a lawsuit may be filed. This is commonly known as the "litigation" exception to disclosure. As soon as the governmental agency, which often is a sheriff's department if the person died in a county jail, receives information indicating that someone may file a lawsuit, most state laws allow the governmental agency to refuse to disclose evidence and other information needed by the surviving family and any retained attorney. This is important if a family chooses to retain an attorney to potentially file a lawsuit regarding the death. As explained elsewhere in this book, most such cases are filed in federal court.

**The document that starts a federal court lawsuit, referred to as a "complaint," must usually be relatively detailed as far as what occurred to avoid dismissal by a federal court.** Such detail can only result, in most cases, from evidence obtained from the governmental agencies who were themselves involved in the death.

**Second, defense lawyers in jail death cases almost always focus on a single tactic regarding the person who died in the jail and surviving family members.** Defense lawyers seek every shred of evidence they can find to make it appear that the decedent and his or her family members are not worthy of any measure of justice. It is effectively a defense of character assassination. While this is strong verbiage, our law firm has uniformly found it to be true. As of this writing, for example, we are prosecuting a jail death case in which defense lawyers have already sought roughly 20 years of mental health records of the decedent. They are now seeking all military records, including military medical and mental health records, and any Child Protective Services records, regarding one

of our clients. Defense lawyers argue they need such records to determine the extent of mental anguish suffered by surviving family members because of the death. After many years of litigating cases, we have found this to be false. Defense lawyers typically seek such evidence to demean and paint our clients as not worthy of compensation or any measure of justice. Aside from seeking such records, defense lawyers will scour the Internet for any statements made by our clients. Our clients may have made the most innocent statements amid their grief, to news media, and those statements could be later used against them. There is virtually nothing our clients say to the new media or others that will not be twisted and used against them.

**Therefore, while there may be a time and place to contact news media, it is our law firm's experience and opinion that the time is usually not shortly after the jail death. In fact, the time may not be unless and until a lawsuit is filed, if even then.**

It is important to work with a competent jail death lawyer who understands how to both interact with news media, if necessary, and obtain evidence regarding a jail death so that a proper lawsuit may be filed. Our law firm has found that many attorneys do not understand how important it is to avoid contacting news media or threatening litigation. Since our law firm has handled a significant number of jail death cases, we frequently receive referrals from other attorneys who do not typically handle jail death cases. It has unfortunately been a common situation where a well-meaning attorney referring a jail death case to our firm notifies us that he or she sent an "evidence preservation letter" to a particular governmental entity. An evidence preservation letter asks the government to retain and thus not destroy evidence related to the death.

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Unfortunately, just like contacting the news media, notifying a governmental agency that one or more family members are represented by an attorney results can be used by the governmental agency to argue that it anticipates litigation. Then, under most state laws, the governmental agency may be able to withhold evidence. This hampers the ability of the family and/or its attorney to determine what happened and decide whether to file a federal lawsuit.

## REQUESTING OFFICIAL RECORDS AND AUTOPSY REPORTS

Our law firm often represents family members who, before our representation, have already requested official jail death records including autopsy reports. **While there is nothing improper or potentially problematic with family members doing so, we usually recommend that a family's attorney request such records.** Family members, simply being honest and forthright with governmental agencies, may say something that could be wrongly interpreted or viewed as threatening litigation. This could cause issues in obtaining evidence or prosecuting any lawsuit, as we describe above. A competent experienced jail death law firm will know how to obtain official records, including autopsy reports, jail observation records, booking documents, and similar documents. We therefore believe that it is best to allow legal counsel to obtain evidence from government officials.

## PRESERVING EVIDENCE

**It can be vitally important for family members to preserve evidence related to the jail death of their loved one.** While we have found that there are numerous things that can lead to a person dying in jail. However, speaking generally, there are just a few categories. People tend to die from denial or lack of medical care, by suicide, or because of assault by fellow detainees or jailers. Evidence of what occurred in a jail preceding a person's death is not usually readily available. However, for example, any case in which a person died as a result of failure to provide medical care, and the medical care that

was not provided was the refusal to administer medications brought to the jail by family members, then it is vital that family members who brought such medications to the jail keep and preserve records of all communications with the jail related to the medications. This could include recordings of telephone calls, emails, text messages, and anything else that would indicate or prove that the family members went to the jail, and the dates and times that they did so.

**We also see family members who have kept detailed timelines of communication with their incarcerated loved one.** Much of the time, such notes can include what the person in jail told the family member, whether about illness, tendencies for self-harm, or threats or assaults by fellow detainees. If phone calls were not recorded, or if recordings are not produced by the governmental entity to attorneys representing the family, then the family's records may be the only thing that could help prove what occurred in the jail. While everyone would like to believe that people working in jails are always honest, when a person dies, many people do whatever they feel they need to do to defend themselves. This can result in the destruction of evidence. It can also, as we have seen in cases, include changing records at or shortly after the time of death.

**Therefore, families should preserve all evidence and turn it over to their attorney as soon as possible after the attorney is hired.**

## DEALING WITH LAW ENFORCEMENT AND JAIL OFFICIALS

It is never an easy decision or a straightforward and clear determination as to how, if at all, family members of a person who died in a jail should deal with law enforcement personnel and jail officials. We would all like to believe that law enforcement personnel investigating a jail death are above reproach, honest, and objective. Unfortunately, while this might be true for a significant portion of the law enforcement community, there are always law enforcement officials who seem to be out more to protect other law enforcement officials and jailers than to investigate and determine objectively what occurred.

Families of people who die in jails usually want immediate answers. They believe in our experience that the best way to obtain those answers is to reach out to the law enforcement community involved in investigating the jail death, as well as those running the jail in which the person died. The state police are involved in a large percentage of jail deaths across the United States. There are also times in which other local law enforcement officials, distinct from those involved in the death, will participate in an investigation. **Almost always, those law enforcement officials will refuse to release any information regarding the jail death until the investigation is complete. In fact, many state laws protect such refusal.**

Jail officials, on the other hand, have every reason in the world to “circle the wagons” and do whatever they can do to protect themselves, their agency (which much of the time is a sheriff’s department), and their reputations from intrusion by family members and/or litigation filed by a jail death attorney. They will at times, based on our experience, stonewall family members. They even attempt to stonewall jail death attorneys representing family members. We have even seen situations in which state police will record statements with family members, who were not even at the jail at which the person died, and have no idea what happened inside the jail, while at the same time allowing jailers to handwrite statements and not be interviewed. There would be no reason for any law enforcement official to do so, unless the law enforcement official is attempting to find out information about a family that could paint the decedent and or his or her family in a bad light. This is a tactic we describe above which is used by many defense lawyers.

These are unfortunate realities. Many times, families contact our law firm after they have become frustrated with law enforcement officials investigating their loved ones’ jail death, or jail officials, refusing to provide evidence or information. It is important that a family retain attorneys who know how to handle this situation and understand what it takes to obtain evidence.

**Usually, it is best to leave communications with law enforcement agencies and jail officials up to the attorney representing the family regarding the jail death.**

## SEEKING IMMEDIATE LEGAL ADVICE

As with reaching out to news media, it is our law firm's experience that some family members choose to seek legal advice shortly after the death of their loved one in a jail, while other family members can wait months or years. The latter group, while grieving about their family member, do not want to relive the death or events leading up to it. They do not want to be involved in the details of what occurred, which makes sense considering the grief that they are experiencing. However, if a family wants to obtain justice for the death of their loved one and potentially see change in society regarding what happens in jails, the best thing the family can do to honor the death of a loved one and to potentially see such change is to immediately seek advice from a competent jail death attorney.

There are plenty of reasons that this is true, some of which have been pointed out above. Jail death lawyers will understand whether to communicate with news media. Jail death lawyers will also understand which evidence is important to preserve, and when to begin requesting official records and other evidence from government officials. They will understand how to best manage evidence and potential claims regarding the death. They will understand how law enforcement agencies and jail officials may communicate with family members, sometimes attempting to cover their tracks.

**It is important that a family, if it wants to seek justice through our legal system, contact an attorney as soon as possible after the jail death.**

## **CHAPTER 2:**

# UNDERSTANDING JAIL DEATHS: COUNTY JAILS VS. CITY JAILS VS. PRISONS



### **KEY DIFFERENCES AND OVERSIGHT**

There are generally three types of places in the United States in which a person might be incarcerated. A person might be incarcerated in a city or town jail, sometimes referred to as a holding facility. Second, a person might be incarcerated in a county jail (known as parish jails in Louisiana). Third, a person might be incarcerated in a prison.

A person might find himself incarcerated in a city or town jail or holding facility. This can occur because of the person failing to pay for a traffic ticket, after the traffic ticket went

to warrant status. It can also occur because of an arrest for an offense that is generally considered a Class C misdemeanor. These are lower-level crimes than those resulting in incarceration in a county jail or prison.

**We have found from litigating cases involving city and town jails that they are usually ill-equipped to handle medical and mental health needs of detainees.**

Further, while it depends on state law, many city and town jails have no oversight other than the city council or town council involved. This differs from county jails in many states. City jails and holding facilities likewise might not have any state law that applies to standards which they must uphold. This can result in, for example, city and town jails being able to use city employees who have no jailer's license or who have no jail experience at all. As a result, unfortunately, many incidents happen in city and town jails.

**Further, as a result of no or little oversight, it can be more difficult to obtain evidence regarding and investigate a death occurring in a city jail or holding facility than a death occurring in a county/parish jail.**

County jails are different since some states provide oversight. This oversight can include a state agency devoted to formulating regulations and conducting inspections of county jails. One such state is Texas, which uses the Texas Commission on Jail Standards. New York is another such state, which uses the New York State Commission on Correction to inspect and oversee all state and county correctional facilities. Kentucky also has a state agency, the Kentucky Department of Corrections, that provides standards and oversight for Kentucky county jails as well as state correctional facilities.

One state that seems to have gone the other direction is Washington. There previously existed the Washington State Jail Commission, created in 1977, and later the Corrections Standards Board, which oversaw local jails. However, oversight was eliminated in 1987. As of this writing, no statewide jail oversight or standards body exists in the State of Washington. There has been recent legislation with the goal of reinstating an independent board to oversee jail standards in that state.



In those states in which county jails have oversight, there can be beneficial regulations in place. Texas seems to lead the nation in this regard, having significant regulations in place. However, unfortunately, a county jail in Texas can violate the Constitution even if it complies with all Texas Commission on Jail Standards regulations. Those regulations do not specify the amount of medical care a person must receive, or how mental health care must occur.

## CONSTITUTIONAL REQUIREMENTS DO NOT NECESSARILY EQUAL REGULATORY REQUIREMENTS.

Thus, even in states like Texas that have beneficial regulations for county jails, it is important that all county jails provide medical care, mental healthcare, and protection from assault, sexual and otherwise, to county jail detainees. If they fail to do so, and try to rely on state regulations, they may find that constitutional violations occurred.

County jails, as opposed to city and town jails and holding facilities, will generally hold people for a lengthier period. Some detainees with misdemeanor offenses can end up in county jails after arrest. However, significant portion of people incarcerated in county jails across the United States are in jail due to alleged commission of a felony. There are also people incarcerated in county jails who have already been convicted after a trial, such people merely waiting to be transferred to a prison. As discussed elsewhere in this book, the constitutional standards applying to people incarcerated in county jails can differ, even though they are all housed together.

Finally, a person may find himself or herself incarcerated in a prison in the United States. Prisons generally are either state prisons or federal prisons. State prisons usually incarcerate people who have been found guilty of committing a state law felony or who have pled guilty to commission of a state law felony. Federal prisons will usually house people who have pled guilty to or been found guilty after a trial of some federal crime.

**Our law firm does not as of this writing handle cases involving state or federal prisons for several legal and practical reasons, only some of which are addressed in this book.**

## COMMON MISCONCEPTIONS

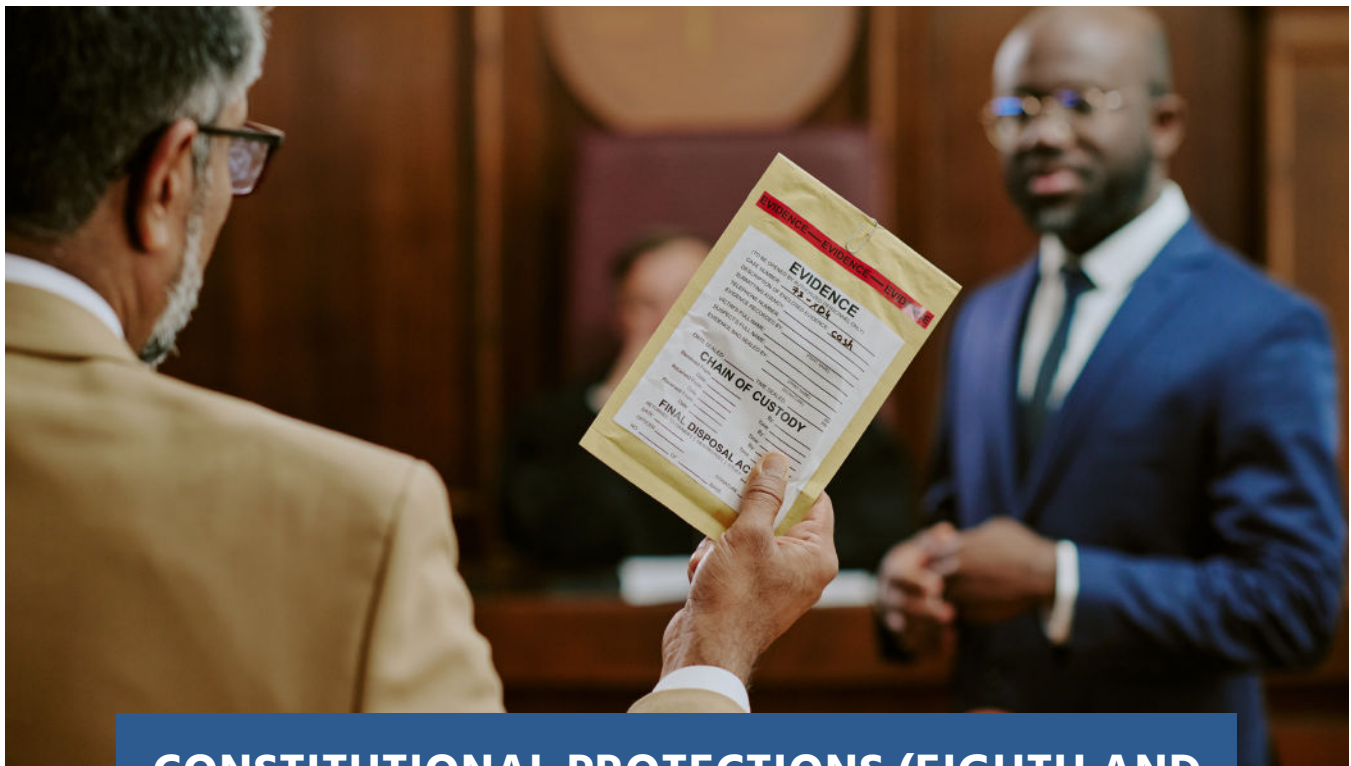
There are plenty of common misconceptions about city and town jails and holding facilities, county jails, and prisons. People who contact our law firm much of the time believe that if some kind of general negligence happened, and a person was seriously injured or died as a result, then the seriously injured person and/or the family of a person who died should be able to file a federal lawsuit and obtain justice. However, unless a facility is run by a private for-profit corporation, negligence may not be enough under federal law. Further, depending on the category of detainee, and whether he or she has been convicted, can determine the federal constitutional law that should apply to any claim.

**It is therefore vitally important that a person who is catastrophically injured in a jail, or the family of a person who has died because of what occurred in a jail, seek out and obtain advice from an attorney who concentrates on and fully understands the types of claims arising in these facilities.**



## CHAPTER 3:

# THE GENERAL LEGAL FRAMEWORK GOVERNING JAIL DEATHS



### CONSTITUTIONAL PROTECTIONS (EIGHTH AND FOURTEENTH AMENDMENTS)

The Eighth and Fourteenth amendments most typically apply in the event a person is seriously injured or killed in a jail or prison. While the analysis can be complicated, usually, the status of the incarcerated person determines whether he or she is protected by the Eighth Amendment or in the alternative Fourteenth Amendment.

**Generally, if a person is convicted and being held after such conviction, then most claims of serious injury or death arising from a constitutional violation are analyzed**

**under the Eighth Amendment.** This book covers these concepts only generally, and every case needs to be analyzed by a competent jail death lawyer. **However, generally, an Eighth Amendment claim will require a demonstration of deliberate indifference.** This deliberate indifference may be required on both the part of governmental actors who were causes of the injury or death, as well as the government in enacting a policy or the alternative allowing a custom or practice to continue or be formulated. The phrase “deliberate indifference” has a specific legal meaning. The general idea behind applying deliberate indifference to convicted prisoners is that people who have been convicted can be punished. Therefore, just mere negligence claims against governmental actors, goes the argument, would not make sense if a person who is in prison alleges that he or she should not be punished.

**On the other hand, once again as a general matter and not always applicable to every case, a person who has not been convicted of any crime and who is catastrophically injured or dies in custody of a jail would have his or her claims analyzed under the Fourteenth Amendment.** Whether deliberate indifference applies to such a claim can depend on whether claims are asserted against natural people who work for the government, natural people who work for a large for-profit corporation, or the governmental entity itself/ This can be further complicated by whether a family, in the event of a jail detainee death, is asserting conditions of confinement claims as opposed to episodic act and omission claims. There are also times when the Fourth Amendment might apply.

These legal concepts are complicated at best, and we have found in litigating jail death cases over the years that even courts disagree on how to apply them. We find disagreement even between federal district court judges in the same state, and between federal judges at the same court of appeals. We do not devote space in this book for full treatment of these issues.

**However, for the family of a person who has died in a jail, it is important to understand that proving claims under the Eighth Amendment or Fourteenth Amendment are not as simple as proving, for example, a car wreck case.**

Generally, in virtually every state, to prove a car wreck case, one must prove mere negligence on behalf of an individual who caused the wreck. If that individual is employed and acting in the course and scope of his or her duties at the time of the wreck, then his or her employer might also be liable. Not so with claims brought under the United States Constitution.

## FEDERAL CIVIL RIGHTS LAW (42 U.S.C. § 1983)

People are often surprised to learn that all violations of the Constitution are not subject to civil litigation. **In other words, just because a governmental actor violates the United States Constitution does not mean that he or she may be sued for damages.** A federal statute, 42 U.S.C. § 1983, allows people to sue natural people and certain governmental agencies for only some violations of the United States Constitution.

Generally, a governmental actor must be acting “under color of state law.” Thus, this statute does not allow a person to sue a federal employee for violations of the United States Constitution. In fact, there are very few situations under which a person could sue a federal employee or the federal government for a violation of the United States Constitution.

**We cover in this book only claims brought against governmental entities such as towns, cities, and counties.**

Moreover, while it was beyond the treatment of this book, the Eleventh Amendment can keep people seeking money damages from suing states in federal court for violations of the Constitution. Thus, without this federal civil rights statute, there would be no way for a person to sue a town, a city, or a county for violating the Constitution and obtain monetary damages.

## STATE LAWS AND WRONGFUL DEATH AND SURVIVAL STATUTES

**Aside from the federal law mentioned above, allowing a person or the family of the person who died in custody to sue for monetary damages, some states have similar laws.** However, unfortunately, only a few states have laws anything close to the federal civil rights statute. Regardless, most federal courts of appeals have determined that wrongful death and survival statutes of states in which constitutional violations occur should apply to the extent they provide remedies, or what a person or family can recover in a lawsuit, for federal claims. In other words, if a state has a wrongful death statute that allows for example the parents, spouse, and children to sue for the wrongful death of a person, and the statute further provides certain types of damages, such as for loss of a relationship or mental anguish, then a federal court applying federal law for constitutional violations should allow those people bringing the lawsuit to attempt to recover such types of damages.

**Likewise, what are called survival statutes apply to certain types of remedies or damages.** Once again, this differs by state. A state, for example, might allow for what are called survival damages, recovery by family members for funeral expenses, medical expenses of the deceased person, and the conscious pain and suffering of the deceased person. A good jail neglect and death lawyer should be able to advise family members as to which remedies apply for which claims.

## INTERACTION OF FEDERAL AND STATE CLAIMS

**Federal and state laws can work together to help families who have lost a loved one in a jail.** As described above, certain state laws provide remedies for those suing for such a loss. Aside from that, as long as the state law does not negatively conflict with federal law, state law can work alongside federal law to provide monetary damages to family members for various types of claims and issues. **Also, if state law remedies are insufficient to compensate a person harmed by a jail death, then federal law may step in and provide additional remedies.**

## CHAPTER 4:

# SOME TYPES OF CONSTITUTIONAL STANDARDS AND CLAIMS



### DELIBERATE INDIFFERENCE AND OBJECTIVE REASONABLENESS STANDARDS

We briefly mentioned deliberate indifference above. Deliberate indifference can apply in certain contexts, and you should consult an experienced jail death and neglect lawyer to determine when it applies. **Objective unreasonableness applies to claims regarding pretrial detainees, when the Fourteenth Amendment applies, and excessive force caused the serious injury or death.** The United States Supreme Court determined this when someone argued that pretrial detainees, who have not been convicted of anything, should not be held to a higher deliberate indifference standard applied to

convicted prisoners. The Supreme Court only specifically addressed use of force cases with pretrial detainees, but our jail neglect law firm consistently argues that objective reasonableness, and not deliberate indifference, should apply to all claims for pretrial detainees arising under the Fourteenth Amendment.

## BASIC HUMAN NEEDS

**The Constitution requires, not surprisingly, that jails must provide the basic human needs of people whom they incarcerate.** People who are incarcerated in county jails cannot provide for themselves. They are literally at the mercy of jailers and others who hold them captive. In a society such as ours, in which we value life and human dignity, the Constitution requires jails to provide, as some examples, basic human needs such as food, clothing, and shelter. **These needs also extend to medical and mental health care, and to protection of jail detainees from themselves and others, as more specifically discussed below.**

## MENTAL HEALTH AND SUICIDE PREVENTION REQUIREMENTS

**As of this writing, the most common cause of death in a county jail is death by suicide,** and it usually occurs through use of a ligature. When people are incarcerated, many of whom have never been arrested before, and another significant portion of whom have severe mental health issues, they at times see no way out of their situation. They will therefore seek ways in the jail to end their lives. Most frequently, people choose items such as bedding, clothing, cords, and anything else that they can find to make ligatures.

**When jailers, medical personnel, and/or mental healthcare personnel in jails are aware of a detainee's self-harm tendencies, and they fail to act sufficient to meet those tendencies and protect the person from suicide,** then a violation of the Constitution occurs as determined by nearly all if not all federal circuit courts in the United States.



Some circuit courts disagree as to whether a person's demonstration of general significant mental health issues is sufficient to put a jail on notice of a person's suicidal tendencies.

Moreover, jails cannot indefinitely incarcerate people who are so severely mentally ill that they are not competent to stand trial. Jails must either release severely mentally ill people, obtain competency restoration services for them, or have them committed to an appropriate mental health institution.

## FAILURE TO MONITOR OR SUPERVISE DETAINEES

Many cases arise because of a failure to monitor or supervise jail detainees. When jail detainees are not monitored or supervised, they may harm themselves, harm other detainees, or become seriously medically or mentally ill, such that assistance may no longer be viable.

MANY OF OUR CASES ARISE UNDER A JAIL'S FAILURE TO MONITOR DETAINEES, A SIGNIFICANT PORTION OF WHICH HAVE RESULTED IN DEATH BY SUICIDE.

## DELAYS IN PROVIDING MEDICAL CARE

**Most of the cases our law firm handles tend to arise because of a delay in or a failure to provide medical care to jail detainees.** We have seen numerous situations arising under things such as the failure to monitor water intake (thus resulting in a water intoxication or death), a bowel blockage, a ruptured appendix, and seizure disorders.

The many ways in which jail death cases can arise because of a failure or delay in providing medical care is as broad as all of the ways in which we as human beings can become ill. There is no excuse for any jail to fail to provide medical care for serious medical issues. This likewise includes helping obtain and administering medications necessary to sustain

life. This could include insulin for someone who has diabetes, seizure medications for a person who suffers from a seizure disorder, and similar medications for someone who has a chronic health condition.

## EXCESSIVE USE OF FORCE INCIDENTS

**All uses of force by jail personnel are not unconstitutional.** For use of force to be unconstitutional, the force used must be excessive. In other words, a jailer must have used unnecessary force based on the situation. A court will look at the facts and circumstances of what occurred to determine whether the use of force in a jail setting violated the Constitution. As we indicate above, the United States Supreme Court has determined that such claims are analyzed under an objective reasonableness standard.

**Therefore, a person seeking to assert his or her rights because of an improper use of force in a jail does not need to show deliberate indifference.**



## CHAPTER 5:

# QUALIFIED IMMUNITY AND BARRIERS TO ACCOUNTABILITY



### WHAT QUALIFIED IMMUNITY MEANS

Qualified immunity is a court-created doctrine that allows individual governmental actors who have been sued for violating the Constitution to avoid liability and responsibility for what they did. Qualified immunity does not exist in, and is not referenced in, the statute that allows a family to sue for the death of a loved one who dies in a jail. In fact, the federal statute does not even contemplate such immunity.

**A governmental actor may be entitled to be immune from suit, liability, or responsibility if he or she is determined by a court to be entitled to qualified immunity.** A governmental

actor, to be entitled to qualified immunity, either must not have violated the Constitution or, even if he or she violated the Constitution, did not violate what courts have referred to as clearly established law.

**Courts cannot agree on what is clearly established law.** Some courts hold that there must be a robust consensus of authority within the jurisdiction of a particular court of appeals to establish that a certain constitutional violation is clearly established. Some judges believe that only the United States Supreme Court can establish the necessary authority. If this sounds complicated, it is.

Courts frequently struggle with whether an individual person is entitled to qualified immunity. Courts will usually look at prior published cases to determine whether a government employee was put on sufficient notice that whatever he or she did violated the Constitution. This is an interesting fiction, because it assumes that all people who work for the government read all cases that are issued regarding their duties. Clearly, this does not happen. Thus, from our law firm's perspective representing people over the years regarding constitutional violations, it makes little sense to grant immunity to a person who violates the United States Constitution. A litigant should have to go the extra step of showing that somehow the law was clearly established. The United States Supreme Court has fortunately carved out an obviousness exception, applying when a governmental actor's actions obviously violate the Constitution. But again, one person's view of what constitutes an "obvious" violation is another person's violation that was not clearly established.

## HOW IT APPLIES TO JAIL DEATH CASES

**Qualified immunity can apply in jail death cases.** Typically, it would apply when an individual jailer or other person is sued because of that person's action or inaction leading to the death. In certain courts of appeals, including as of this writing the Fifth Circuit Court of Appeals, the person filing the lawsuit has to prove that the person asserting the defense of qualified immunity is not entitled to the defense. This is completely backwards as to the way most defendants would prove defenses. Typically, if a defendant has a defense, he or she must prove it. However, in jail death cases, at least currently in the

Fifth Circuit Court of Appeals, the person filing the lawsuit must prove that a defendant does not have a defense.

**Typically, when a natural person is sued in a jail death case in federal court, that natural person will file a motion to dismiss claims against him or her based on qualified immunity.** If the court denies the motion, as of this writing in the Fifth Circuit Court of Appeals, before the person bringing the lawsuit gets to conduct any discovery (formal investigation into the facts of the case), the defendant losing the motion to dismiss can appeal the decision to the court of appeals. That appeal can take from one to three years, depending on the workload of the court. If the court determines that the trial court correctly denied the motion to dismiss, then the court of appeals will return the case to the trial court. Discovery can then occur. Once discovery concludes, the same defendant who lost the motion to dismiss can then file a motion for summary judgment on the issue of qualified immunity. If the defendant loses that motion, the defendant can once again appeal to the court of appeals. This delays the case for years, which is exactly what most defendants want to happen. If the defendant again loses in the court of appeals, and the case is returned to the trial court, then a trial may finally occur – years after the case was originally filed.

## CHALLENGES IN OVERCOMING IT

**There are several challenges in overcoming qualified immunity.** As indicated above, perhaps the most difficult challenge is showing to a court that a specific violation of the Constitution was a clearly established violation under previous case law. Courts seem to look at prior cases, and details in them, to see how close the prior cases matched the facts of the current case. Thus, even if there is a significant constitutional violation, and a person died as a result, a court analyzing qualified immunity, if it is unable to find a prior published case with facts very close to the current case, will grant immunity to the natural person who was sued.

**One of the other issues in overcoming qualified immunity is the way it can be used to delay litigation for years.** As indicated above, natural persons asserting qualified immunity have the right to appeal determinations of the trial court in the middle of a

case. Defendants used this to their advantage, hoping that over the years a family will grow tired of litigation, witnesses will die, and key family members will die before the case can ever get to trial.

## RECENT TRENDS IN COURTS AND POSSIBLE REFORMS

Recently, several lawyers who represent families in jail death cases have been arguing that qualified immunity should be eliminated. There is no reason that a court should create a defense to a cause of action granted by a federal statute. Some courts have begun to consider such elimination, but they are powerless to do so until the United States Supreme Court decides the issue. Some states with laws similar to the federal law we mentioned above provide for their state that qualified immunity will not apply. Ultimately, as of this writing, we do not see elimination of the qualified immunity defense on the horizon.

**Therefore, families who suffer the death of their loved one in a county jail and lawyers representing them must litigate cases with due consideration to how qualified immunity can affect the time to trial, if any trial is ever even allowed to occur.**

## **CHAPTER 6:**

# PRIVATE JAIL OPERATORS: ROLES AND RESPONSIBILITIES



### **DIFFERENCES BETWEEN PUBLIC AND PRIVATELY OPERATED FACILITIES**

**W**hile it might seem odd, there are large for-profit corporations who run jails, as opposed to the governmental entities which have custody of detainees.

One obvious difference between the two is that the corporations will employ their own employees to work in jails, while governmental agencies have their own employees. While a government agency or county might be responsible for taxpayers as to funds spent, a large for-profit corporation could even be publicly traded, being responsible to

shareholders to make significant profits. This seems a bit bizarre, that we would incentivize as a society for-profit corporations to save money while incarcerating people in our jails.

## PROFIT MOTIVES AND COST-CUTTING MEASURES

**There are clearly profit motives for large corporations who advertise themselves as being able to run jails more efficiently than counties who would typically operate those jails.** Those corporations can advertise to county commissioners and county judges that they can save counties money through various cost-cutting measures. They might choose to cut the quality of food provided to detainees, conduct fewer checks of detainees (thus allowing a smaller payroll), short-cut supplies and clothing to be provided to detainees, and significantly limit medical care provided to jail detainees, including limiting visits to a local hospital when needed. Once again, these corporations are responsible for obtaining profits for shareholders.

**They are not non-profits but instead seek to make as much money as they can while at the same time controlling incarceration of people in jail pursuant to public law.**

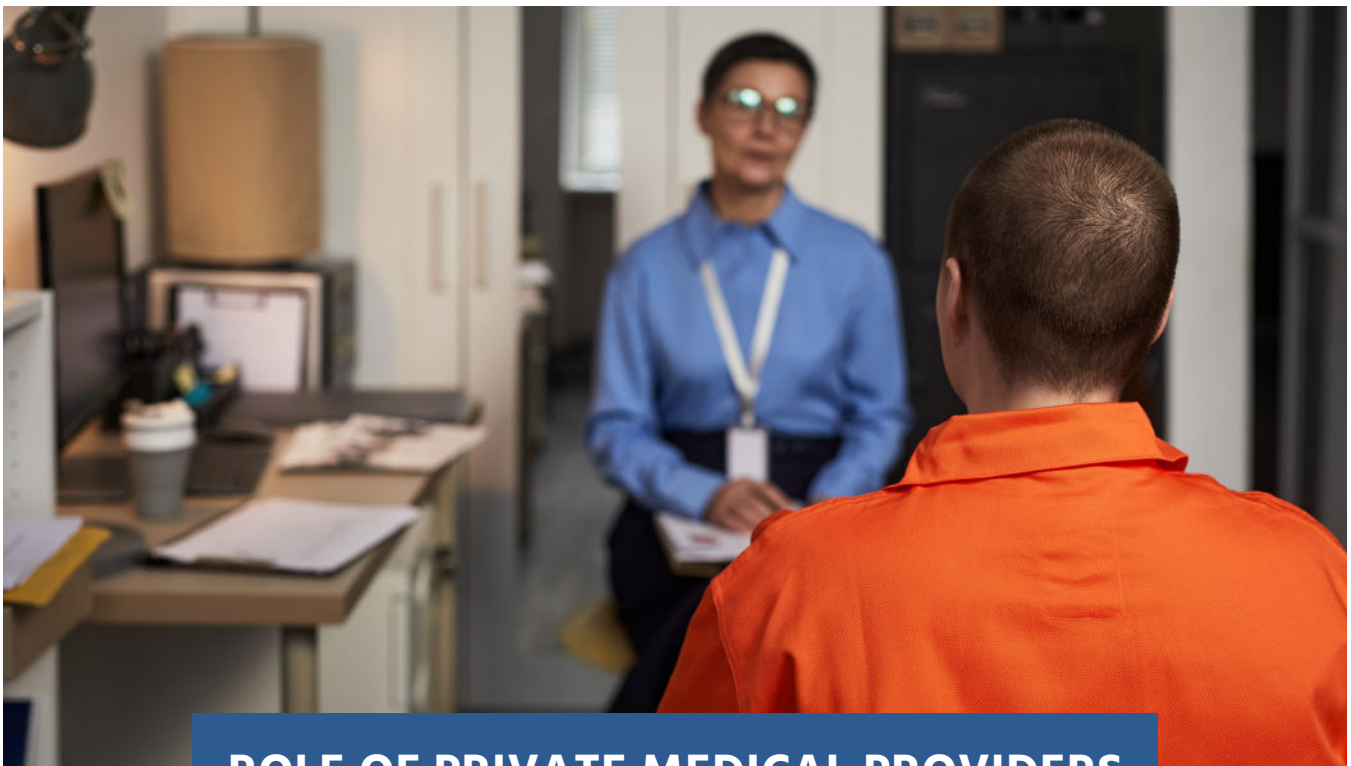
## LEGAL RESPONSIBILITIES OF PRIVATE COMPANIES

**Private companies who advertise to governmental entities to run jails have at least the same legal responsibilities as the governmental entities who allow such corporate intervention.** These private companies are liable under the United States Constitution, pursuant to the federal statute mentioned above, in the same way that a county for example would be liable for its policies, practices, and customs. Further, counties should be liable for the policies, practices, and customs of these large for-profit jail operators, because counties cannot, pursuant to United States Supreme Court precedent, delegate their constitutional responsibilities by simply hiring out the work.



## **CHAPTER 7:**

# PRIVATE MEDICAL AND MENTAL HEALTH CONTRACTORS IN JAILS



### **ROLE OF PRIVATE MEDICAL PROVIDERS**

**P**private medical providers in county jails will generally provide all medical care to detainees which can be provided on-site, and in many cases be responsible for determining when jail detainees can be sent to a local hospital for emergency treatment. These typically for-profit medical providers market themselves to counties as a way of saving costs. As with private jail operators, this results in a potential conflict between maximizing profits and providing appropriate medical care to detainees. A company might shirk its responsibilities to jail detainees, seemingly with the goal to maximize profits and save counties money.

## STANDARD OF CARE AND COMMON FAILURES

**The standard of care applicable to a private for-profit jail medical provider is usually the same as the standard of care applying to any other medical provider in the state** in which an incident occurs. These are typically referred to as medical malpractice claims. However, aside from medical malpractice claims, private for-profit medical providers working in jails are also subject to compliance with the United States Constitution. Thus, a private medical provider has the same obligation to provide medical and mental health care to jail detainees as does the governmental agency who has incarcerated the person, again, typically a county or sheriff's department.

There are several common failures to comply with constitutional standards that our law firm has seen over the years, but **perhaps the most common is failing to have a person who has a serious medical issue timely transported to a local hospital for emergency** evaluation and treatment. While it is impossible to determine a person's subjective motives, circumstantial evidence often supports the view that the reason that a jail detainee is not transported to a local hospital is either due to callous disregard for the person, or potentially to save money for the private healthcare provider (and the county with which the provider has a contract).

**Aside from failing to take people to a hospital when they need emergency medical care, our law firm has seen over the years instances in which medications that are clearly needed to sustain a detainee's life are not provided.**

This can occur due to customs and practices that are lax in medication administration. It can also occur due to policies that do not properly address continuity of care and medication administration for a person who is arrested and has a chronic life-threatening medical condition.



## ACCOUNTABILITY AND LIABILITY ISSUES

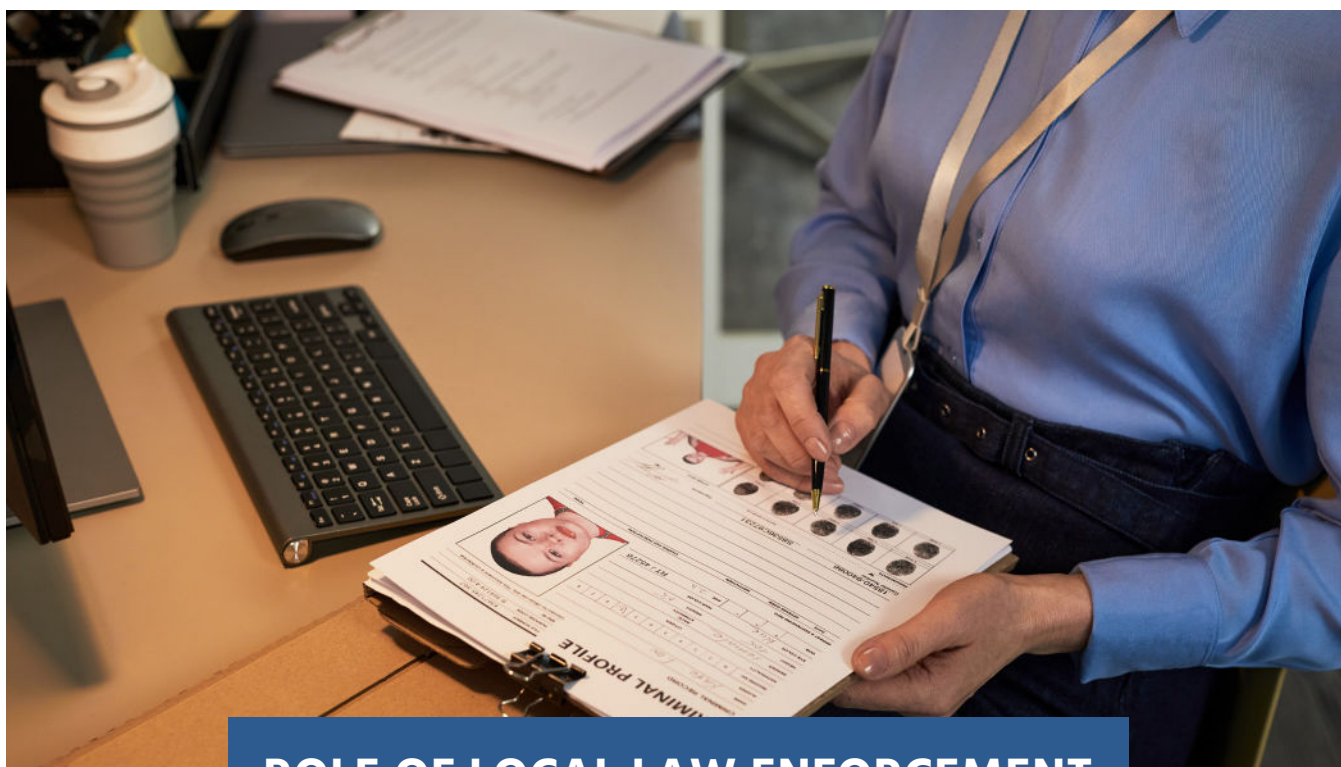
**As indicated above, private for-profit medical providers working in county jails can be held liable for violating the United States Constitution in the same way that a county can be held liable for violating the Constitution.** Interestingly, a county has a non-delegable duty to protect detainees in its care. This protection includes providing appropriate medical and mental health care. The United States Supreme Court has determined that a county cannot delegate away its constitutional responsibility by contracting with a private medical provider. The county should remain liable. Therefore, if the policies, practices, or customs of a private medical provider working in a jail lead to serious catastrophic injury or death of a jail detainee, then the county should be liable even if it did not directly participate in events leading up to the catastrophic injury or death.

A COUNTY CANNOT, FOR INSTANCE, SAY THAT IT DID NOTHING WRONG RELATED TO A JAIL DETAINEE'S DEATH BECAUSE IT SIGNED A CONTRACT WITH AND PAID A PRIVATE MEDICAL PROVIDER.

**Holding a private medical provider accountable for its actions only occurs when there is a settlement of a lawsuit or a judgment after a trial.** This accountability in our civil justice system occurs because of the payment of compensation to people who have been harmed. Unlike many counties across the United States, private healthcare providers will typically have general liability insurance. Thus, depending on the amount of a settlement, the insurance company might assure that a judgment payment is made, and the corporation is therefore accountable for the wrong in which it participated.

## CHAPTER 8:

# INVESTIGATIONS: WHO CONDUCTS THEM AND WHAT FAMILIES CAN EXPECT



## ROLE OF LOCAL LAW ENFORCEMENT

**A**fter a jail death, the role of local law enforcement in investigating the death can vary widely depending on the state, law within the state, and the local jurisdiction involved. Typically, if a person dies in a county jail, the jail would have been run by the county sheriff. The sheriff's department will then conduct its own investigation or at least should conduct its own investigation. This investigation can have two goals.

First, the investigation can be to determine whether any criminal activity was involved in which led to the death in jail. Second, the investigation will assist a sheriff's department,

if it is operating responsibly, in determining if any of its employees need to be counseled, reprimanded, educated, demoted, or terminated. Local law enforcement can also be involved in investigating a jail death, even if the local law enforcement agency did not operate the jail and was not involved at all in the occurrences leading to the death. This can occur in certain states, if state law requires an agency other than that involved in the death to investigate. This is true in Texas for example, because of the Sandra Bland Act.

## STATE POLICE INVOLVEMENT

**State police can also be involved in investigating a county jail death depending on the jurisdiction.** State police, if a death occurs in a county jail, should be a neutral law enforcement agency determining what occurred, and typically for the purpose in determining whether one or more people might be charged with a crime related to the death. State police are known by various names across the United States, but they will generally be a separate agency within state government.

## MEDICAL EXAMINER AND AUTOPSY PROCEDURES

**Depending on state law, a medical examiner might conduct an autopsy of a deceased inmate.** Certain states require that a medical examiner conduct an autopsy for every death occurring in or because of an occurrence in a county jail. **However, “when a death occurs in or as a result of something occurring in a county jail” does not always seem to be clear to some sheriff’s departments.** Some sheriff’s departments argue that, if a person becomes deathly ill in a jail facility, and the person is discharged from custody and left at a local hospital, if the person dies, then the death really did not occur in custody or because of what happened in the jail. It is a way in which sheriff’s departments will attempt to shirk their responsibility to potentially report about and investigate a death. The sheriff’s department might blame hospital medical personnel for the death. Regardless, if this occurs, then a medical examiner / forensic pathologist may never learn about the death. Instead, the death could be as so many other deaths

occur in hospitals – a person supposedly dying of natural causes regarding whom no autopsy need occur.

If an autopsy is conducted of a person who dies in or because of what occurred in a county jail, a competent medical examiner will conduct both an internal and external examination of the body. Further, a competent medical examiner, who is typically referred to as a forensic pathologist, will likewise send a blood and potentially urine sample to a lab for analysis.

**This analysis is important, and most forensic pathologists will not finalize an autopsy report, thus giving the manner and cause of death, unless and until they have received this toxicology testing result.**

Further, when determining the “cause” of death, a forensic pathologist is just determining from a medical perspective what physical issue or malady was a cause of the death. When a forensic pathologist is determining the manner of death, the physician is determining how the malady or issue arose. For example, if a person dies of suffocation, the cause of death would be suffocation. However, if a jailer was sitting on top of that person, while the person was face-down for several minutes, in a manner such that the person could not breathe, then the manner of death could be homicide.

## INTERNAL JAIL INVESTIGATIONS VS. EXTERNAL OVERSIGHT

As indicated above, an internal jail investigation might occur through the sheriff’s department that is operating the jail. These internal investigations can uncover wrongdoing, and they can assist outside law enforcement in prosecution of anyone who might have committed a crime leading to the death. **External oversight does not always occur, depending on the law enforcement agency involved.** External oversight effectively takes place through state police or some other law enforcement agency investigating. Further, a district attorney’s office might get involved in the investigation. However,

many district attorney's offices simply wait for law enforcement investigations to be concluded to determine whether to turn the case over to a grand jury for potential criminal prosecution.

## IT IS OUR LAW FIRM'S EXPERIENCE THAT SUCH PROSECUTION RARELY OCCURS.

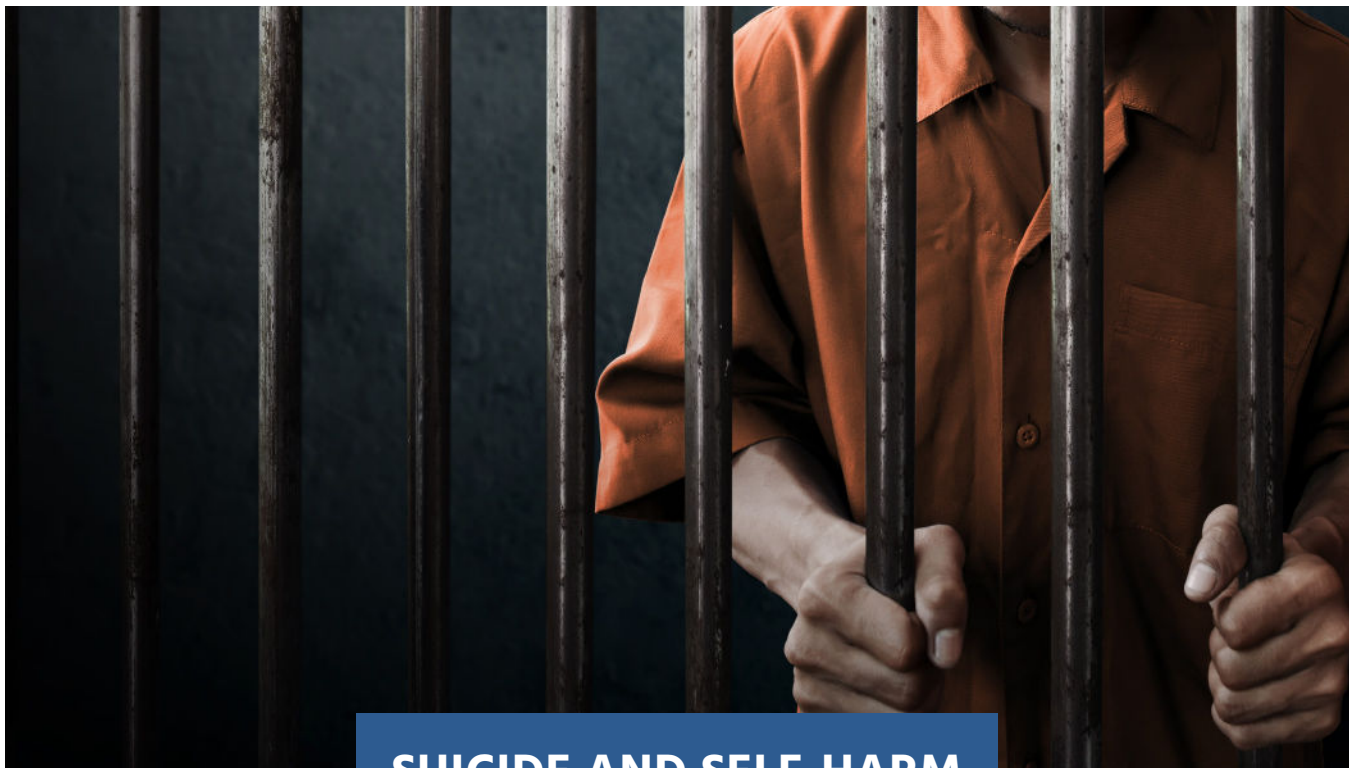
### LIMITATIONS OF OFFICIAL INVESTIGATIONS

**There are several limitations of official investigations.** The most obvious limitation is that of human nature - the tendency of people in groups to support each other. The law enforcement community generally sticks close together. Thus, while state police might be charged with objectively viewing a death, when investigating it, state police may feel a kinship with local law enforcement officials. State police might thus modify the results of their investigation so as not to paint in a bad light jailers or law enforcement officials. Our law firm has seen this occur on plenty of occasions over the years, including seeing in certain documents a law enforcement official attempting to talk a physician forensic pathologist out of that pathologist's opinion regarding the cause and or manner of death. We have also seen investigators outside of the agency involved in the death making excuses for why jailers or other law enforcement personnel acted in a certain manner.

**Therefore, while official investigations can uncover significant information regarding a jail death, they are limited.** If a federal constitutional or civil rights lawsuit is filed regarding the jail death, then jail death lawyers can use the discovery process in the lawsuit to find out much more about what occurred. Further, experienced wrongful death attorneys will know how to question witnesses to elicit truth. They will also know how to request documents and other evidence to avoid a skewed view advocated by law enforcement officials who have potentially chosen to stick together rather than stick to the facts.

## **CHAPTER 9:**

# COMMON CAUSES OF DEATH IN JAILS (MEDICAL NEGLIGENCE, SUICIDE, VIOLENCE)



### **SUICIDE AND SELF-HARM**

**D**eath by suicide is by far the most common cause of death in county jails. We have handled a number of these cases over the years, and they are perhaps some of the most heart-wrenching cases that a family must endure. There are a number of reasons that people die by suicide in jails.

Sometimes, a person has never experienced arrest or incarceration. That person may see his or her world falling around him or her, thinking that there is no way out of the



situation in which they have found themselves. They believe that the only way out is death by suicide. Others enter the legal system and are incarcerated after a lengthy battle with mental illness or drug addiction. Even others face a lengthy prison sentence that they believe they cannot endure. Regardless of the cause, virtually all jail detainees who die by suicide do so through use of a ligature. Ligatures can be made from several materials, the most common being phone cords, bedding, and clothing. Detainees use anything which may be turned into a loop or even used across the bottom of a person's neck.

**We have learned over the years an unfortunate number of ways that people can die by suicide.** A common misunderstanding is that a person must be suspended from the ceiling to die by suicide. This is not true. We have seen situations where a person would form a ligature that was roughly half a circle and then lean into the ligature and die in such a manner. Generally, if a person is known to be suicidal and is provided with the means and time to die by suicide, the person will find a way to do so in a jail cell.

THIS IS WHY IT IS CRITICAL TO APPROPRIATELY MONITOR  
SUCH PEOPLE.

## FAILURE TO PROVIDE MEDICAL CARE FOR CHRONIC CONDITIONS

**Another common situation we have seen in litigating jail detainee claims over the years is failure to provide medical care for chronic conditions.** We have seen a number of people die because of a seizure disorder. Further, it is far too frequently in the news that a person died in a jail because of not being given insulin and/or not otherwise being assisted with managing diabetes. People with chronic medical conditions in jails must be provided medical care necessary to manage those chronic conditions. If a jail makes no such provision, then a constitutional violation likely occurs.

## DRUG AND ALCOHOL WITHDRAWAL DEATHS

**Our jail neglect law firm has also seen and handled a number of drug and/or alcohol withdrawal-related deaths over the years.** It is common for law enforcement to run across people who are intoxicated by drugs and/or alcohol. If a person appears to be a danger to himself or others, then law enforcement should obtain a medical evaluation before incarceration. In fact, a jail should require a medical evaluation before incarcerating a person who is a danger to himself and others. Unfortunately, this does not always occur.

We have seen several situations where people are severely impaired and allowed to vomit and/or urinate on themselves over a lengthy period without receiving any medical care. This can equate to a constitutional violation depending on the facts of the case.

## INMATE-ON-INMATE VIOLENCE

**We have also seen a number of detainee-on-detainee assault cases.** Jails have an obligation to protect detainees from each other. This obligation, related to violence between detainees, includes the important jail functions of classification and housing. Classifying and housing inmates appropriately can avoid the risk of assault by one inmate on another. It would thus be improper to put together two detainees, each of which had been accused of and/or had a history of physical assault of others.



## USE OF FORCE AND RESTRAINT-RELATED DEATHS

There has been plenty of news media coverage of restraint-related deaths since the death of George Floyd. **Our law firm has handled restraint-related deaths, and they need not occur. All law enforcement and jail personnel should be trained on how to restrain a person without risking the person dying because of the restraint.** Generally, a person should not be held face-down with pressure on the person's neck, back, buttocks, or legs for any period at all. This can lead to suffocation. Further, law enforcement officers and jailers can only use that force necessary to gain compliance with lawful goals. If law enforcement officers or jailers use unreasonable force, then they violate the Constitution and are subject to liability for death and/or catastrophic injury they cause.

## CHAPTER 10:

# JAIL NEGLECT AND DEATH CIVIL RIGHTS LAWSUITS



### OVERVIEW OF SECTION 1983 LAWSUITS

**M**ost civil rights lawsuits brought because of a jail death, or because of a catastrophic injury or sexual assault of a county jail detainee, are usually filed in federal court. The reason such lawsuits are filed in federal court is because federal courts have jurisdiction over federal claims. This is referred to as “federal question” jurisdiction. However, many states also allow federal claims to be filed in state courts. Even so, few lawyers representing families of those who die in jail choose to file such suits in state courts. This is in part because defendants have the right to “remove” the lawsuit to federal court. This removal can simply delay the proceeding unnecessarily.

If the lawsuit is initially filed in federal court by the family's attorney, then the attorney will draft a complaint. A complaint is the document that starts the lawsuit. The complaint contains a number of required things, such as the names of the parties, the basis for the court's jurisdiction, the venue for the case (where it should be filed based on what occurred or who the defendants are), basic facts about what occurred, remedies that are being sought, and a request for judgment against certain defendants.

## FEDERAL CIVIL RIGHTS COMPLAINTS LAW IS COMPLICATED.

While the Federal Rules of Civil Procedure seem to indicate that a party filing a lawsuit need only file a short and plain statement, this will generally not allow a jail death lawsuit to survive a motion to dismiss. Motions to dismiss are typically filed in such cases. If there are insufficient factual allegations in the complaint, the complaint being referred to as a "pleading," then a court may dismiss the case. This is one of the reasons it is so important to obtain as much evidence as possible before drafting a federal civil rights complaint. Lawyers with little experience in this practice area may choose to file suit immediately, pleading in the complaint very little information, and thus potentially subject their clients to unnecessary dismissal.

After a lawsuit is filed, all defendants should be served with process quickly. Once service of process occurs, defendants must appear in the lawsuit. Defendants make an appearance generally either by filing an answer or some other type of motion. The other type of motion was typically filed, as indicated above, is a motion to dismiss the lawsuit pursuant to Federal Rule of Civil Procedure 12. This is where federal procedure in a civil rights lawsuit becomes complicated. In certain circuit courts, such as the Fifth Circuit Court of Appeals, if certain types of natural people are sued, then as of this writing, a party who brought a lawsuit may not be able to conduct any discovery unless and until the court rules on a motion to dismiss by the natural person defendant. Likewise, at some point, with or without discovery, a defendant might file a summary judgment motion as indicated elsewhere above. How a court rules on these motions can determine whether there are appeals in the middle of the case.

This book is designed to provide an overview for families and not to delve into all of the complicated procedural hurdles and occurrences that can occur in a jail neglect, sexual assault, or death lawsuit.

**A lawyer experienced in handling jail deaths and jail sexual assaults can guide a family or an assaulted previous detainee and how to best litigate such a lawsuit.**

## COMMON DEFENSES RAISED BY DEFENDANTS

**Defendants raise a number of defenses to claims brought by a family regarding a jail death.** As indicated above, qualified immunity is the most often asserted defense by a natural person who is a governmental employee. Defendants can also raise several other defenses, which in our experience are many times frivolous and without merit. Defendants, as far as typical defenses, may include a statute of limitations defense, a failure to mitigate damages defense, some type of alleged statutory or constitutional cap on damages defense, or several other defenses.

**It is important that the lawyer a family chooses fully understand limitations periods applying to a case, any related tolling periods, and specific claims which can be made in a case by various categories of people.**

As of this writing, a significant number of the states provide that a wrongful death claimant has up to two years to file a suit regarding a jail death. That wrongful death claimant then must generally exercise due diligence to have defendants appropriately and promptly served. However, this is just a general rule in some states regarding some claims regarding certain categories of claimants. The reader should obtain legal advice from an appropriate lawyer and not rely on information in this book.

**Some states also toll or suspend limitations periods for various reasons, including the incompetency of a claimant or a claimant being a minor.** Further, regarding other

types of claims, such as claims for survival damages, certain states toll the limitations period for such claims and unless and until an administrator is appointed. The complicated nature of the claims, claimants, and limitation periods for various types of claims and claimants is a major reason for family members of a person who dies in a jail to ensure that they retain an experienced law firm accustomed to dealing with such cases.

## TIMELINE OF A CIVIL RIGHTS LAWSUIT

**One of the most often questions we receive from new clients is how long a lawsuit will take to resolve.** Any lawyer who tells a client how long a lawsuit will take to resolve either is ignorant of such lawsuits, inexperienced, or not being truthful. Lawsuits can resolve in a matter of weeks, although it is our experience in jail neglect and death cases that that rarely occurs. Most often, defendants will fight for quite some time before getting serious about paying an appropriate amount to resolve a case. There are so many off-ramps to a federal civil rights lawsuit that it is impossible to determine how long a case will take. We have seen cases resolve in a few months, and we have seen cases take years to resolve. **There are generally no hard and fast timelines in the Federal Rules of Civil Procedure requiring judges to do certain things within a certain period.**

As an example, while this is not typical, we have seen courts take one to three years to decide certain dismissal motions filed by defendants. More often, courts will decide such motions within a matter of weeks or a short number of months. Further, as referenced above, if natural person defendants are sued, and they may be entitled to qualified immunity, there could be appeals in the middle of the case. While this may all be discouraging to the family of a person who dies in jail, it is the reality of our civil justice system. In fact, defendants use this to their advantage to wear down a family with the hope that over the years the family will grow weary of standing up for the rights of their deceased loved one.

**It is important that attorneys representing such families be aggressive in litigating cases and use reasonable avenues to ensure that cases proceed.**



## CHAPTER 11: DAMAGES AND COMPENSATION AVAILABLE TO FAMILIES



### TYPES OF DAMAGES (ECONOMIC, NON-ECONOMIC, PUNITIVE)

**T**here are various categories of what are referred to as “damages” available to certain family members when a person dies in a jail. “Damages” are at times referred to as “remedies.” Interestingly, even though claims filed for jail deaths are typically based on federal law, damages available for such claims can be determined in part by the state in which the death occurred. This book does not cover state law causes of action, as they vary widely across the United States. Thus, as it relates to federal claims, we consider federal law applying state law remedies.

**Remedies vary widely state-to-state. However, the most common economic remedies include burial expenses, medical expenses, and lost wages of the person who died.** Some states and federal courts will also allow economic damages for “loss of life” or loss of earning capacity or loss of inheritance. The most common non-economic damages which the law allows include, for wrongful death beneficiaries, damages for loss of the relationship with the deceased person and mental anguish suffered. Non-economic damages may also be available for survival claims or those brought by an estate administrator for estate claims, for the conscious pain and suffering of the person who died. Punitive, or what are referred to as exemplary in some areas, damages might be available. However, such damages are not available against governmental entities but instead only natural persons and corporations. Once again, this book is not designed to provide legal advice of any type whatsoever. Available damages and remedies can vary state-by-state, and federal court by federal court.

## WHO MAY RECOVER DAMAGES

There are various categories of people who may recover damages, some of whom have been mentioned above. **Generally, depending on the law of the state in which the death occurred, there will be wrongful death beneficiaries.** Such wrongful death beneficiaries commonly include the parents, spouse, and children of the person who died. Some states may also allow siblings to be wrongful death beneficiaries. Many states will allow a person’s estate to recover separate damages, or remedies, such compensation to be paid to the deceased person’s heirs. Those damages are referenced above and may include burial expenses, medical expenses, lost wages, and loss of life damages.

## FACTORS THAT AFFECT DAMAGES AWARDS

**We find that a common misconception is that, alone, the facts underlying a case and leading to a person’s death should determine the amount of damages a jury will award.** This can be true in some cases, but there are usually numerous factors that can



affect damages awards and settlements. Economic damages can generally be calculated. While economic damages experts can differ in their opinions regarding the amount of damages, thus allowing a jury to come to its own conclusion, non-economic damages, or those for which there is no “bill,” are not subject to calculation. Thus, by way of example, if the father of a person who died in jail filed a lawsuit and is seeking damages for loss of his relationship with his son, and mental anguish that he has experienced as a result of his son’s death, his total lack of any meaningful relationship with his son before his son’s death can significantly affect what a jury might or might not provide to him for damages he seeks. Likewise, a wrongful death claimant who had a wonderful relationship with the deceased person might cause a jury to award high damages compared to someone with a lesser relationship.

Further, jurors are people. They therefore bring with them biases and prejudices in society to the courtroom. Jury selection in trial, known as voir dire, is a time when hopefully some people with such biases and prejudices can be eliminated from the potential jury panel. However, in federal court, many judges do not allow attorneys to conduct voir dire (as would a state court judge).

**It is thus important to retain a lawyer who will be honest with you about factors which could affect what a jury might award as damages in your case.**

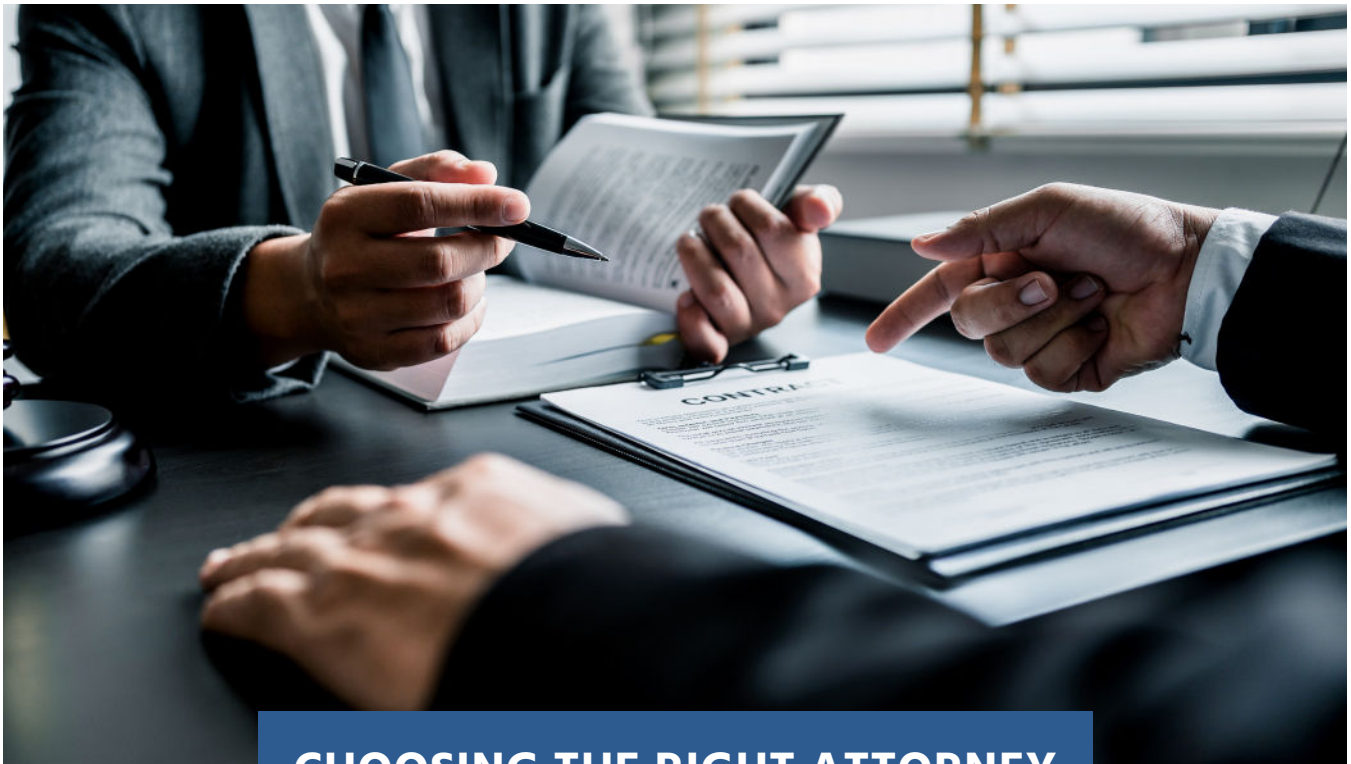
A lawyer does his or her client no favor by promising some large damage award when there are factors which would indicate that such would not occur.

## EXAMPLES OF PAST VERDICTS AND SETTLEMENTS

People are always interested in the dollar amounts of past verdicts and settlements as it relates to their own case. **However, justice regarding jail deaths does not occur in a vacuum.** One cannot look at a settlement in a city or state outside of that in which the death occurred and then somehow make a calculation to determine the value of the current case. One likewise cannot even necessarily look at another similar case in the same jurisdiction, and the jury verdict or settlement amount, to determine the value of the current case. There are many factors that go into the value of a case, and past verdicts and settlements seem to indicate little the value of a case. Such verdicts and settlements also do not consider the human factors which result in the dollar amount of settlements and verdicts, and the jury makeup in the prior case(s). As with lawyers who choose to quickly file a civil rights lawsuit without having sufficient evidence, lawyers who promise huge settlements and verdicts should make prospective clients leery.

## CHAPTER 12:

# WORKING WITH AN ATTORNEY EXPERIENCED IN JAIL DEATH CASES



### CHOOSING THE RIGHT ATTORNEY

HOW DO YOU CHOOSE THE RIGHT ATTORNEY TO REPRESENT YOU OR YOUR FAMILY RELATED TO YOUR LOVED ONE'S DEATH IN A JAIL?

**W**e suggest that you consider several things. First, the attorney should be experienced in handling complicated civil rights lawsuits in federal court. A general “wrongful death” attorney who may have handled premises liability cases, motor vehicle collisions, or other more common types of cases may not have experience with law and

procedure applying specifically to jail death cases. Such a lawyer likewise may only have experience in state court and have rarely litigated in federal court. Experience means something, and it is worthy of your consideration.

## YOU MUST TRUST THE ATTORNEY AND FIRM WITH WHICH YOU CHOOSE TO ASSOCIATE.

While online reviews do not tell the whole story, they tell at least part of the story. Certainly, when people become upset with any business, or an attorney, it seems to be those people who are most likely to leave a review. However, over time, reviews of an attorney you are considering should be generally good. While you will usually not personally know the attorney or lawyers at the law firm with whom you choose to associate regarding your loved one's death, the experiences of others can help inform you as to whether the firm engenders trust.

Finally, you should determine whether the attorney with primary responsibility for your case handles all different types of cases or instead concentrates his or her docket almost entirely, if not entirely, on civil rights cases involving death and or serious injury.

**Even more particularly, you should consider whether that attorney concentrates his or her practice primarily on deaths occurring because of what occurs in jails, as opposed to death or injury resulting from police shootings, tasings, or other uses of force.**

This is important, because within the complicated subset of law within which civil rights cases exist, law applying to jail neglect and death cases differs from that applying to police officer use-of-force cases.

## WHAT TO EXPECT FROM THE ATTORNEY-CLIENT RELATIONSHIP

What should you expect from your relationship with your attorney and firm? You should expect communication. This does not mean that your attorney should be calling you daily, or even weekly.

**You should, however, be informed as to the status of your case, through your attorney's firm providing copies to you of documents that firm creates and speaking with you regarding critical junctures in the case.** Your phone calls to your attorney's law firm should not be ignored. They should be returned within a reasonable period during business hours by a person who is appropriate to address the issue, whether that be a legal assistant, paralegal or attorney. You should also expect that your attorney will be a zealous advocate for you when communicating with courts and defense lawyers.

**Equally important, you should expect your lawyer, when speaking to you, to be objective.** In other words, your lawyer should tell you his or her honest opinion as to the merits, and weaknesses, in your case. Doing anything less would be a disservice and set unreasonable expectations.

## CHAPTER 13: CONCLUSION AND NEXT STEPS



### KEY TAKEAWAYS FROM THIS BOOK

**What are some of the general key takeaways that you should have from this book?** First, understand that if your loved one died in a jail, and you want to seek justice for that loved one, it may not occur quickly. Civil rights lawsuits take time. Defendants and civil rights lawsuits fight because they do not want to be held accountable, and they do not want to pay just compensation for what occurred. It is therefore imperative that if you choose to seek justice for what happened to your loved one, you retain an attorney who knows what he or she is doing, has experience with civil



rights cases in federal court, and is aggressive and is willing to go the distance. That said, you should also take away that your attorney should be objectively honest with you about the strengths and weaknesses in your case. It is not weakness for your attorney to be objective with you, telling you the truth about all matters related to your case. You should expect nothing less.

**THIS HONESTY DOES NOT DIMINISH YOUR ATTORNEY'S ABILITY TO  
AGGRESSIVELY ADVOCATE FOR YOU AND/OR YOUR FAMILY.**

## **ENCOURAGEMENT TO SEEK LEGAL ADVICE AND FINAL WORDS OF SUPPORT**

**If you lost someone in a jail, we encourage you to seek legal advice.** We encourage you not to contact the media or law enforcement personnel and begin to say things that, while innocent, may be used against you later. There is rarely anything you can say to news media or law enforcement that will help your case. It might certainly help with grief. It might certainly shed a light on your loved one's death. But it likely will not help your lawyer when he or she is seeking evidence to potentially litigate a federal lawsuit and seek ultimate justice for your loved one's death.

Nobody wants to file a lawsuit, and no one wants to contact a lawyer. However, despite the unfortunate view of attorneys in our society, created in part by mass advertising, it is attorneys who have effected change. Litigation, while it might seem unpleasant, is the reason that cars are safer. It is the reason that planes are safer. It is the reason that so many things in society have changed for the better over the years. The same is true regarding jail neglect. Unless and until jails across our country are held accountable through litigation for neglect, nothing will change. Accountability, whether in our society or the workplace, is necessary for our society and workplaces to function appropriately.

**IF YOU TRULY WANT TO SEEK JUSTICE FOR THE DEATH OF YOUR  
LOVED ONE IN A JAIL, WE ENCOURAGE YOU TO PUSH ASIDE THE  
PSYCHOLOGICAL BARRIERS AND GET REAL HELP FOR THE BATTLE  
AHEAD. THE MEMORY OF YOUR LOVED ONE DESERVES NO LESS.**



## ABOUT THIS BOOK

This e-book has been written by T. Dean Malone and published by the Law Offices of Dean Malone, P.C. as a resource for families who have lost loved ones in jails. It is intended for informational purposes only. It does not constitute legal advice and it should not be relied upon as such, nor does it create an attorney-client relationship between the reader and the Law Offices of Dean Malone, P.C., or T. Dean Malone individually. Every case is unique, and professional legal advice tailored to the specific facts and circumstances is essential. T. Dean Malone is licensed to practice law by the State Bar of Texas and is admitted to practice before various federal courts, including all federal district courts in the State of Texas, the United States Court of Appeals for the Fifth Circuit, the Supreme Court of the United States, and several other federal courts across the country.

## ABOUT THE AUTHOR

T. Dean Malone is the founder and lead trial attorney at the Law Offices of Dean Malone, P.C., leading the civil rights and jail neglect section of the firm. He earned his B.A., summa cum laude, in Law and Criminal Justice from the University of Texas at Dallas, graduating with a perfect 4.0 GPA. He then received his J.D. from Baylor University School of Law, with a concentration in general civil litigation, where he served in several staff roles on the Baylor Law Review, including serving as Executive Editor.

Mr. Malone is a seasoned trial lawyer, having tried numerous cases to jury verdict and handled arbitration proceedings through final hearing. His practice is devoted to serious injuries and deaths resulting from jail neglect, and he is frequently entrusted with jail neglect referrals from other lawyers due to his experience in this challenging civil rights niche.

As of this publication in 2025, he is admitted to practice before the U.S. District Courts for the Eastern, Southern, Northern, and Western Districts of Texas; the U.S. District Courts for the Eastern and Western Districts of Oklahoma; the U.S. Court of Appeals for the Fifth Circuit; the United States Supreme Court; and various other federal courts in other states across the nation.