

# INSURANCE MATTERS

**COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA**  
THE **VOICE** OF PENNSYLVANIA COUNTIES



## **PELICAN Welcomes a New Subscriber!**

PELICAN welcomes its newest subscriber, Communities at Indian Haven in Indiana County! With this new addition, PELICAN now has 19 subscribers.

PELICAN provides professional and general liability for non-profit nursing homes and is sponsored by the Pennsylvania Association of County Affiliated Homes (PACAH). Subscribers receive a full-service package including in-house claims management, risk management and educational opportunities.

For more information on PELICAN, please [contact Andrew Smith](#).

## **How to be Best Prepared for the Death of an Inmate in Custody**

*From our partners at Jones Passodelis, PLLC.*

It is one of every warden's worst fears: an inmate dies in custody. A death in a county jail sets off a whirlwind of events—calls from distraught and angry family members about their loved ones, calls from members of the prison board about what happened, and calls from the press. With any death in custody, regardless of the cause, a civil rights lawsuit is likely. Allegations of deliberate indifference to serious medical needs, reckless indifference to a particular vulnerability to suicide, and failure to protect inmates from harm at the hands of others are some of the most common—and most serious—claims filed. How can you be best prepared to respond to all of these inquiries and any resulting lawsuit?

What happens in the days and weeks following such an event will have a tremendous impact if and when a lawsuit is later filed. The following list, while

not exhaustive for every scenario, covers some best practices in the event of a death in custody.

**1. Prepare a record of the events.** Incident reports should be prepared by all jail officials involved including any jail contractor (like medical personnel, for example) who interacted with the inmate during the relevant time. These should be gathered early when memories are most fresh. A timely incident report preserves the important details and provides credible evidence of what each person experienced. If the death occurred close in time to the intake of the inmate, a report from the intake officer as to the inmate's condition or demeanor may be critical and should be preserved in a report, particularly if the inmate records on the intake are not sufficiently detailed. If the death did not occur close in time to the intake, but much later in the incarceration, relevant medical or mental health records should be secured to show any ongoing care that might connect to the death.

Inmates who may have witnessed important events, such as cellmates, should be interviewed both to preserve their recollections and to prevent them from later changing their stories about what happened. This can be important even if the cellmate did not witness the death. For example, the cellmate may have information about whether, in a suicide case, the inmate talked about suicide or said anything to an officer, whether the inmate asked for medical care, etc. At times, preserving what the inmate did not say is just as important as what was said. For example, an inmate stating that another inmate who committed suicide never told anyone about being suicidal can be powerful evidence.

**2. Preserve all evidence.** Beyond the obvious need to preserve all physical evidence, video evidence must be secured, as it plays a critical role in a subsequent lawsuit. Surveillance systems typically overwrite video on a recurrent basis, making early preservation critical so that it is not lost. The best practice is to preserve all video of an inmate, whether it appears to be relevant to the death or not. What does not seem to be important at the time of the investigation can prove to be very important later, because it is almost impossible to determine what theories will be developed by a clever attorney. If evidence is not preserved, a claim of "spoliation" may result, which could lead to an adverse inference in a lawsuit that the failure to preserve the video is an indication that what was depicted was negative for the county. Preserve all video—cell video, video from the inmate at booking, video showing movement throughout the facility, video from the block/pod—to prevent it from being overwritten.

It is also important to preserve all emails, texts and related forms of electronic communications for the same reason. Similarly, an inmate's telephone calls are powerful evidence of their state of mind and can play an important role in future litigation. Speak with your IT personnel to make sure this data is secured.

**3. Advise law enforcement.** In most instances, contact law enforcement (county detectives, state or local police, the coroner) to do an independent investigation of the death. In addition to determining whether any crime has been committed, the creation of an independent investigation may prove helpful in subsequent civil lawsuits.

**4. Make the appropriate reports to state and federal authorities.** An Extraordinary Occurrence Report is required to be completed and submitted to

the Pennsylvania Department of Corrections. The Federal Death in Custody Act now requires aggregation of mortality data from county jails so logging such incidents will ensure compliance and ease for reporting.

**5. Report the matter to PCoRP or the county's insurer.** Making PCoRP aware is an obligation under the terms of your coverage, and failure to provide a timely report could jeopardize coverage. After a coverage review, PCoRP will frequently assign counsel to assist you with your investigation and preparation in the event a lawsuit is filed. While traditional insurers may not provide investigative support like PCoRP, this is a proactive approach that is taken in the best interest of the Member and the program.

**6. Assess any violations of policy.** Conduct an internal review as to what occurred and whether policy was followed. If a lawsuit is filed, the opposing attorney will ask whether you did, and if you did not, why. If policy was followed, any report should note that finding but it should be supported by evidence gathered. If an employee violated policy, that should be noted as well and action should be taken to address the violation. In civil rights cases, which would be the style of case for a death in custody, unlike in standard negligence cases, a county is not liable simply because an employee acted inappropriately. If it was a failure to follow a proper policy that caused a problem, and the employees were aware of that policy, the county is not necessarily liable.

**7. Preserve the policies/inmate handbook in place** Preserve versions of the relevant policies that were in effect at the time of the death, as well as a copy of the inmate handbook. They will be relevant and necessary for a lawsuit. If review of the death leads to a recommendation for changes to policies, do not let the fact of the death stop you from making necessary changes. Learning from these unfortunate events is a critical part of any good operation.

A death in custody could certainly be viewed as a nightmare. Being prepared to deal with this dramatic scenario will allow a warden and the county to rest a little easier if all efforts have been made to put your best foot forward in dealing with the aftermath.



## LocalGovU Online Training - New Courses

LocalGovU online training has come a long way in ten years! What started as a few hundred courses completed every month has turned into a few thousand completed every month. The incentivized online training continues to be one of the best value-added services to our insurance programs, and we continue to expand the course catalog. CCAP Insurance Programs is pleased to announce the addition of new courses with more to come later this year:

**Hazmat First Responder Awareness** - Assists the First Responder in recognizing hazardous substances and understanding how to respond.

**Officer Wellness and Mental Health Awareness** - Aims to assist law enforcement personnel with the tools necessary to be better prepared mentally and physically to endure the stress of day-to-day policing. This course will cover a holistic approach to maintaining a healthy mind, body, and spirit.

**PREA: Rights, Reporting, and Retaliation for Juvenile Detention**- As a follow-up to the PREA Overview course, this second PREA course focuses on rights: specifically on a resident's right to be free from sexual abuse and sexual harassment, and a resident's and an employee's right to be free from retaliation for reporting sexual abuse and sexual harassment.

**PREA: Rights, Reporting, and Retaliation for Prisons and Jails**- As a follow-up to the PREA Overview course, this second PREA course focuses on rights: specifically on an inmate's right to be free from sexual abuse and sexual harassment, and an inmate's and an employee's right to be free from retaliation for reporting sexual abuse and sexual harassment. The information and activities are designed to meet objectives consistent with required employee training elements outlined in the PREA Standard, 115.31.

**Coming Soon:**

Pediatric Shortness of Breath (ALS)

Pediatric Shortness of Breath (BLS)

Ethics in Public Safety

Excel Fundamentals

Handcuffing Special Populations

Child Abuse Investigations

Field Training Officer Overview



## **PIMCC Prison Directory Updates**

The PIMCC Prison Directory is updated twice a year to reflect staff changes. Our most recent update has been completed! Click here to [view the updated directory](#), or find it [on CCAP's website](#).

## Heat illness prevention:

- Plan outdoor work and activities in the morning when possible
- Drink water every 15 minutes while outdoors; follow up with a low sugar electrolyte sports drink
- Take rest breaks in the shade or AC
- Wear light-colored cotton clothing
- Avoid eating a hot heavy meal
- Avoid alcohol or caffeinated beverages
- Pace yourself



### Symptoms of early stage or mild heat illness:

- Heavy sweating
- Thirst
- Red, itchy, bumpy rash
- Headache
- Muscle cramps
- Nausea
- Dizziness
- Weakness

### Mild heat illness treatment:

- Move to a cool area
- Drink water
- Loosen clothing
- Apply cool compresses to skin
- Seek medical attention if symptoms persist or worsen

**Know the symptoms and take precautions before heat illness becomes serious or life-threatening.**



## More on Pennsylvania's Amended Data Breach Notification Law

On May 2, 2023, Pennsylvania's Amended Breach of Personal Information Notification Act became effective, marking the first substantive changes to the law since it was originally passed in 2005.

### Expanded Definition of Personal Information

"Medical information," "Health insurance information," and "username or e-mail address" (if in combination with a password or security question that would permit access to an online account) are now included in the definition of Personal Information.

### Reduced Notification Timeline

The Act establishes a new, shorter timeline for state and county entities to notify individuals whose Personal Information has been impacted by a breach, while also imposing new regulator notification obligations for these entities. Under the Act:

- A State agency, defined as “Any agency, board, commission, authority or department of the Commonwealth and the General Assembly”, must now provide notice to individuals within **seven business days** following the determination of a breach, and concurrently provide notice to the Office of the Attorney General.
- A State agency under the Governor’s jurisdiction must also provide notice of the breach to the Governor’s Office of Administration within **three business days** following the determination of a breach.
- A county, public school, or municipality must provide notice to individuals within **seven business days** following the determination of a breach and must provide notice to the District Attorney in the county where the breach occurred within **three business days** following the determination of a breach.
- “Public school” means any school district, intermediate unit, charter school, cyber charter school, or area career and technical school.
- A state agency contractor, defined as “A person, business, subcontractor, or third-party subcontractor that has a contract with a state agency for goods or services that requires access to personal information for the fulfillment of the contract” must now provide notice to the Chief Information Security Officer, or a designee of the State Agency, **as soon as reasonably practicable** after the discovery of a breach.

### **Establish Cyber Best Practices**

The Act also requires that entities who maintain, store, or manage computerized data on behalf of the Commonwealth utilize encryption, or other appropriate security measures, if that computerized data contains Personal Information. The same entities must also develop and maintain: (1) a policy to govern the encryption or other security measures; and (2) a policy for data storage and retention.

The short notification window emphasizes the importance of understanding what Personal Information county entities maintain, updating incident response plans, and conducting tabletop exercises regularly to practice responding to cyber incidents.

*This is intended to keep readers current on developments in the law and is not intended to be legal advice. Matthew H. Meade is the Chair of the Cybersecurity, Data Protection & Privacy Group at Eckert Seamans Cherin & Mellott, LLC. If you have any questions, please contact Matthew H. Meade at 412.566.6983 or [mmeade@eckertseamans.com](mailto:mmeade@eckertseamans.com) or Emma M. Lombard at 609.989.5024 or [elombard@eckertseamans.com](mailto:elombard@eckertseamans.com).*

## **Insurance Team Member Spotlight Featuring Cassie Troup**

Cassie is the Insurance and Underwriting Director, managing a team of five while handling the underwriting needs of the various insurance programs. She works on PELICAN, PComp (Pennsylvania Counties Workers’ Compensation Trust) and PCoRP



(the Pennsylvania Counties Risk Pool).

Prior to her current role, Cassie served as the Claims Director for five years, tackling many high-level projects and instituting new initiatives.

Prior to joining CCAP, Cassie spent eight years working in the private sector for Nationwide Insurance. She has held various positions within the insurance industry, including casualty claims adjuster, commercial lines, underwriter, bodily injury specialist and marketing associate, and was even activated for catastrophe relief duty during Hurricane Sandy. Cassie received her Bachelor of Science degree in criminal justice from Penn State University and holds her P&C License in Pennsylvania.

**What's your favorite part of working here?**

"Hands down the concept of pooling—it is fascinating and provides such benefit to the counties and constituents of Pennsylvania. PCoRP, PComp and PELICAN are in the business of identifying solutions for properly protecting the counties of Pennsylvania and that's something to be proud of and that I certainly can get behind."

**What's the most exciting thing you are working on right now?**

"PCoRP's Summer Cyber Tour, visiting member counties and educating them on the benefit and need of instituting property cyber security measures."

**What skill do you think everyone should learn?**

"I have a couple responses to this: how to make a cocktail (it's 5 o'clock somewhere!), how to do simple home repairs, how to Google like a boss, how to motivate a team and public speaking."

**Quote of the Month**

*"An ounce of prevention is worth a pound of cure."*

*-Benjamin Franklin*

**CCAP INSURANCE PROGRAMS**

ASK US FIRST...WE COVER IT ALL!

Other CCAP  
Publications



County Commissioners Association of Pennsylvania (CCAP) | 2789 Old Post Road, Harrisburg,  
PA 17110

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