

**PUTTING LOUISIANA PRISONS ON NOTICE:
A CALL FOR DEATH NOTIFICATION TO
NEXT-OF-KIN IN THE EVENT OF AN
INMATE’S DEATH**

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I. INTRODUCTION

“The way they said it happened, it didn’t make sense to us . . . [A]ll I want is to fill the holes. Give us the answers and we can go from there. We can move on as a family.”

—Felicia Morgan¹

Felicia Morgan recounts the imprecise explanation offered for the death of her incarcerated brother, Clifton Morgan, at Orleans Parish Prison (OPP).² Clifton Morgan was the forty-second person to die while under the care of OPP since April 2006, following the prison’s reestablishment after Hurricane Katrina.³ His family continues to struggle to find answers to the conditions surrounding what could have been a preventable suicide.⁴ Morgan entered the jail while taking medications for mental health deficiencies, but was denied treatment once under prison⁵ control, a denial his family members blame for his death.⁶ The Morgans are not alone in their puzzlement involving the death of a family member incarcerated in OPP. A series of wrongful death lawsuits against Orleans Parish Sheriff Marlin N. Gusman highlights the struggles of many families whose loved ones have died while in OPP custody.⁷

Once an inmate is removed from a sheriff’s official custody, their death is subject to little or no inquiry.⁸ This leads to a lack of accountability for prison violence, perpetuation of dangerous confinement conditions, and often a failure to properly notify next-of-kin of inmate whereabouts. For example, a failure to notify next-of-kin occurred following the release of John Michael

1. *Reshaping a Greater New Orleans: Criminal Justice—Change by Decree*, WYES (July 25, 2013), <http://www.wyes.org/ondemand/reshaping-a-greater-new-orleans-criminal-justice-2/> [hereinafter *Reshaping New Orleans*].

2. *Id.*

3. *Id.*

4. *Id.*

5. A prison is a “state or federal facility of confinement for convicted criminals, esp. felons.” *Prison*, BLACK’S LAW DICTIONARY (10th ed. 2014).

6. See *Reshaping New Orleans*, *supra* note 1.

7. See Richard A. Webster, *Dying at OPP: A Look at Five Lawsuits Against the New Orleans Jail*, NOLA.COM/TIMES-PICAYUNE (Sept. 30, 2014, 10:24 AM, updated Oct. 17, 2014, 2:57 PM), http://www.nola.com/crime/index.ssf/2014/09/dying_at_opp_a_look_at_5_lawsu.html#incart_story_package.

8. See Naomi Martin, *Inmate Deaths Sometimes Go Uncounted at Orleans Parish Prison*, NOLA.COM/TIMES-PICAYUNE (Oct. 14, 2014, 8:05 PM), http://www.nola.com/crime/index.ssf/2014/10/deaths_go_uncounted_at_orleans.html.

“Mike” Williams from OPP.⁹ Mike Williams became unconscious while in OPP lockup and unbeknownst to his family was released from custody upon his move to the intensive-care unit at Interim LSU Hospital.¹⁰ An automated jail phone system, and later a jail employee, told Bonita Williams, Mike’s sister, that her brother had been released, but did not instruct as to his whereabouts.¹¹ Because Mike Williams was sick with HIV/AIDS, Bonita’s search for her brother began with the public hospital, where hospital employees incorrectly told her they did not have her brother in care.¹² After seven days of searching other hospitals, homeless shelters, and various areas across New Orleans, Bonita discovered her brother had been under the public hospital’s care since the start of her search.¹³

Even more concerning is OPP’s failure or delay in notifying families of inmate deaths.¹⁴ Cheryl Washington can attest to such a failure. Her husband, Kerry Washington, died in custody two days after transfer to OPP in April 2006.¹⁵ Yet, Cheryl was not notified of her husband’s in-custody death until two weeks after the fact.¹⁶ The Washingtons’ story is just one of many citing failures, delays, and incomplete notifications of family members’ deaths while in OPP custody.¹⁷

While OPP, a local jail, provides specific examples of reporting failures in the case of in-custody death,¹⁸ the problem is not unique to the city of New Orleans or the state of Louisiana. Instead, the lack of a national standard governing death notification¹⁹ in state run penitentiaries²⁰ creates problems

9. Martin, *supra* note 8.

10. *Id.*

11. *Id.*

12. *Id.*

13. *See id.*

14. *See* Richard A. Webster, *Families Kept in the Dark When Loved Ones Died in New Orleans Jail*, NOLA.COM/TIMES-PICAYUNE (Sept. 30, 2014, 10:24 AM, updated, Oct. 10, 2014, 12:32 PM), http://www.nola.com/crime/index.ssf/2014/09/new_orleans_jail_deaths_famili.html#incart_story_package [hereinafter Webster, *Families*].

15. Richard A. Webster, *Death Investigations at New Orleans Jail Lack Independent Oversight*, NOLA.COM/TIMES-PICAYUNE (Oct. 7, 2014, 9:04 AM, updated Oct. 10, 2014, 12:21 PM), http://www.nola.com/crime/index.ssf/2014/10/death_investigations_at_new_or.html#incart_m-rpt-1 [hereinafter Webster, *Death Investigations*].

16. *Id.*

17. *Id.*

18. *See* Webster, *Families*, *supra* note 14.

19. “Death Notification” will be used to refer to the notification of a deceased inmate’s next-of-kin (of a deceased inmate) in the event of the inmate’s death while

reaching far beyond OPP, resulting in inhumane treatment of prisoners and their families across many states. Because Louisiana is a jurisdiction particularly in need of reform in this area of the law, it is given special attention in this Comment.

This Comment addresses the need for Louisiana to implement legislative standards for death notification of next-of-kin in the event of an inmate death. Death notification to next-of-kin is necessary to uphold the basic human dignity of inmates, a concept that is traceable to the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. Additionally, such legislation will protect inmates' families from mental anguish in the event of an in-custody death. Louisiana should implement general death notification standards in the prison system and may look to other states' policies as guidance.

Section II explains the underlying right to death notification of next-of-kin in the event of an in-custody death, considering both the dignity owed to the life of a prisoner and the separate right of their family members to receive notification. The section first explains current treatment of death notification to next-of-kin in the event of a Louisiana state prison in-custody death. It then studies possible local effects of the 2013 New Orleans Parish Prison Consent Decree (Consent Decree)²¹ on death notification procedures.²²

Next, Section III considers other instances in which death notification must take place. First, the section critiques death notification procedures of the Federal Bureau of Prisons, notification procedures in place in other state prisons, and death notification in other contexts, specifically military service death notification procedures. The section then analyzes the differences and similarities of those death notification contexts with notifications in the state prison setting.

Lastly, Section IV suggests a legislative solution that the state should consider to address the sensitive subject of death notification. This Comment proposes classes of persons to be

in custody.

20. The terms "prison" and "penitentiary" are used interchangeably throughout this Comment.

21. Generally, a consent decree references a settlement contained within a court order. Parties may settle without admitting fault by agreeing to take actions demanded by court order. See *Reshaping New Orleans*, *supra* note 1.

22. See *id.* at 45:00–47:00 (addressing the consent decree).

notified in the event of an in-custody death and possible manners of notification, while considering the costs of implementing such a program. Specifically, Louisiana may draw from existing Louisiana Civil Code provisions in designating classes of family members to be notified in an event of an inmate death. This Comment proposes solutions with two goals in mind: respecting the human dignity of prisoners and avoiding infliction of mental anguish and trauma on deceased inmates' next-of-kin.

II. BACKGROUND

A. THE UNDERLYING RIGHT TO DEATH NOTIFICATION

The foundation of this Comment's proposal rests on the fundamental human rights of dignity and fairness. The right to notification is supported by these fundamental human rights and delineated in case law establishing affirmative duties with respect to prisoners' rights. These values demand respect for the dignity of a deceased inmate and acknowledgment of a separate right to notification owed to the decedent's family. This section explores the constitutional provisions and case law supporting the existence of those rights.

1. INMATES ARE OWED BASIC RIGHTS.

The Bill of Rights contains key criminal procedure protections in the Fourth, Fifth, Sixth, and Eighth Amendments.²³ Most relevant to this discussion, the Eighth Amendment provides, "(e)xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."²⁴ Under provisions of the Eighth Amendment,²⁵ made applicable to the states through the Due Process Clause of the Fourteenth Amendment, states owe affirmative duties to their prisoners.²⁶ These duties have been defined to encompass

23. See, e.g., Scott W. Howe, *The Troubling Influence of Equality in Constitutional Criminal Procedure: From Brown to Miranda, Furman, and Beyond*, 54 VAND. L. REV. 359, 448 (2001).

24. U.S. CONST. amend. VIII.

25. "The Eighth Amendment applies 'only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . .'" *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199 n.6 (1989) (quoting *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977)); see also *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (holding that due process requires provision of medical care to pretrial detainees injured during police apprehension).

26. *Norred v. Litchfield*, 2006-2156, p. 3 (La. App. 1 Cir. 11/2/07); 977 So.2d 1004, 1006; see also U.S. CONST. amends. VIII, XIV.

medical care.²⁷ The Supreme Court interpreted the Eighth Amendment's prohibition against cruel and unusual punishment as a requirement that states provide adequate medical treatment and basic care to prisoners.²⁸ Further, prohibition against cruel and unusual punishment bans holding prisoners in unsafe conditions.²⁹ This requires providing adequate food, shelter, and clothing in addition to the aforementioned medical care requirement.³⁰ Further solidifying this requirement, in the event that a state government is not upholding its duty of care to inmates, certain measures may allow the federal government to step in and force states to comply.³¹ Specifically, as is the case of the Orleans Parish Prison Consent Decree, a consent decree may go into effect to ensure the proper treatment of inmates, and the federal government thereafter has the power to enforce the terms of that consent decree.³² Because prisoners are unable to care for themselves due to deprivation of liberty during incarceration, states act as caretakers for inmates.³³ It is thus fair to require the state to play the role of caretaker³⁴ and equally fair to require the state as caretaker to promptly notify families of their loved ones' deaths.

While individual liberty can be deprived as punishment for crimes, the Constitution demands retention of other rights for the incarcerated.³⁵ A fundamental aspect of the Eighth Amendment's prohibition against cruel and unusual punishment is upholding

27. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 198–99 (1989).

28. *Estelle v. Gamble*, 429 U.S. 97, 105–07 (1976) (requiring a prisoner to prove the state exhibited “deliberate indifference” to his “serious” medical needs in order to violate Eighth Amendment's requirement of adequate medical care).

29. *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (identifying “nothing less than the dignity of man” as the basis of the Eighth Amendment and stating that the State's power to punish must “be exercised within the limits of civilized standards”).

30. *Estelle*, 429 U.S. at 103 (establishing the “government's obligation to provide medical care for those whom it is punishing by incarceration”).

31. For instance, a prison may be made the subject of a federal consent decree. A federal consent decree mandating overhaul of Orleans Parish Prison was filed June 6, 2013 following litigation brought against Orleans Parish Sheriff Marlin Gusman (stemming from mistreatment of prisoners and deplorable OPP confinement conditions). *See infra* Section II(D).

32. *See infra* Section II(D).

33. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 198–99 (1989) (citing *Estelle*, 429 U.S. at 103).

34. *Id.*

35. *Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011).

“the essence of human dignity inherent in all persons.”³⁶ Deprivation of adequate care and medical treatment is inconsistent with this concept of dignity.³⁷

While incarceration alone is arguably “at odds with” the very concept of human dignity because it “generate[s] a permanent underclass,”³⁸ human dignity concerns are *especially delicate* when addressing custodial deaths. If shelter and care are demanded from the state during life, should not a prisoner also be owed dignity in and after their death, especially if that death is a result of inadequate prison care?

2. INMATES’ NEXT-OF-KIN ARE OWED THE BASIC RIGHT OF NOTIFICATION.

Maintaining inmate dignity upon death addresses only one side of the argument for a general right to death notification of next-of-kin. A separate right of notification belongs to those who stand to receive notification. The effects of incarceration extend past the prisoner, to both the families and communities of inmates.³⁹ For example, in 2003, over half of the 1.4 million adults in-custody in state and federal prisons were parents.⁴⁰ Of those inmate parents, eighty-nine percent were incarcerated in state prisons.⁴¹ A later analysis conducted in 2010 showed “one in every twenty-eight children has a parent incarcerated in a prison or jail.”⁴² With this high volume of inmate parents, the

36. *Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011) (citing *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)).

37. *Id.*

38. Andrea C. Armstrong, *No Prisoner Left Behind?: Enhancing Public Transparency of Penal Institutions*, 25 STAN. L. & POL’Y REV. 435, 442 (2014) (citing Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, DÆDALUS, Summer 2010, at 8, 11) (arguing that incarceration perpetuates a “permanent underclass” by “crystallizing” “social and economic disadvantage[s]”).

39. *Id.* at 439–43; see also Todd Clear, *The Effects of High Imprisonment Rates on Communities*, 37 CRIME & JUST. 97, 122–23 (2008).

40. JEREMY TRAVIS ET AL., URBAN INST., FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY 1 (rev. ed. 2005) (citing statistical information from 2003); see also generally CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, INCARCERATED PARENTS AND THEIR CHILDREN (2000), <http://www.bjs.gov/content/pub/pdf/iptc.pdf> (collecting more detailed statistics about imprisoned parents).

41. JEREMY TRAVIS ET AL., *supra* note 40, at 1.

42. ECON. MOBILITY PROJECT & PUB. SAFETY PERFORMANCE PROJECT, PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 18 (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf.

effects of incarceration on inmates' children cannot be ignored. With concentrated incarceration in a community, "social and economic networks" are disrupted, "... in effect reinforcing a community's marginalization from the American dream."⁴³

In 2014, the *Times-Picayune* published a month-long investigative series, *Dying at OPP*, chronicling the potentially devastating effects of incarceration on inmates' families.⁴⁴ The *Times-Picayune* covered several families' struggles emanating from failure or mistake in OPP death notification proceedings.⁴⁵ Along with the struggles of the Washington family described in Section I, the family of Willie Lee experienced needless confusion and pain as a result of a death notification mishap.⁴⁶

Willie Lee was a forty-year old father of two at the time of his incarceration and death.⁴⁷ After Mr. Lee had been incarcerated at OPP for only nine days, the Orleans Parish Sheriff's Office (Sheriff's Office) issued a written statement announcing his death, attributing it to "extensive heart disease and . . . cardiac arrest" following a fight.⁴⁸ The Sheriff's Office later admitted that Lee had complained of difficulty breathing and had collapsed only thirteen minutes after the fight, calling into question the true cause of death.⁴⁹

Lee's mother, Margie Lee Hulitt (Margie Lee), also described disbelief in the written statement announcing her son's death.⁵⁰ Prior to the death announcement, a pre-recorded phone message told her that her son had been released—eight hours *after* his time of death reported in the announcement.⁵¹ Still grappling with these inconsistencies, Margie Lee received a call from her son's former girlfriend who confirmed she had heard of Willie

43. Armstrong, *supra* note 38, at 437 (citing Clear, *supra* note 39, at 122–23).

44. In this multi-part news article and video series, NOLA.com and the *Times-Picayune* investigated inmate deaths at OPP, exposing "institutional failings" regarding causes of inmate deaths as well as notification of next-of-kin following those deaths. Webster, *Death Investigations*, *supra* note 15; *see also Dying at OPP*, NOLA.COM/TIMES-PICAYUNE, <http://topics.nola.com/tag/dying%20at%20opp/> (last visited Jan. 16, 2016).

45. *Dying at OPP*, *supra* note 44.

46. Webster, *Families*, *supra* note 14.

47. *Id.*

48. *Id.*

49. Webster, *Death Investigations*, *supra* note 15.

50. *Id.*

51. *Id.*

Lee's passing from another jail inmate.⁵² Margie Lee did not confirm the truth regarding Willie's death until *nearly an entire day after* Interim LSU Hospital had pronounced him dead.⁵³

The Lee family included these death notification failures as part of their wrongful death claims filed in New Orleans Civil District Court on May 23, 2014.⁵⁴ The death notification inconsistency complaints were brought in conjunction with claims that the jail failed to provide Mr. Lee critical medical treatment following the fight.⁵⁵ The ability of survivors to bring a wrongful death action⁵⁶ confirms their standing and fundamental right to recover from the wrongful death of a loved one. This right should necessarily include the right to notification of a family member's in-custody death.⁵⁷

Louisiana Civil Code Article 2315.2 defines classes of a decedent's surviving family members that may have an *independent* cause of action for damages sustained following their decedent-family member's death.⁵⁸ The article vests *an individual right* to the surviving classes: "suit may be brought by the following persons to recover damages *which they sustained* as a result of death."⁵⁹ The same provision sets forth the following family members that have a right to bring a wrongful death suit:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
- (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.

52. Webster, *Death Investigations*, *supra* note 15. Margie Lee later received a six-page letter from the informant inmate revealing that another inmate had beaten Mr. Lee, after which he was "pepper sprayed, kicked, and dragged across the floor by deputies" who did not immediately call for an ambulance. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. See LA. CIV. CODE ANN. art. 2315.2 (2010).

57. The state would benefit from implementing death notification procedures. If such procedures were in place, notification could limit the amount of emotional damages a family member could recover if they were to file a wrongful death lawsuit similar to that filed by the Lees. While recovery in wrongful death suits is limited to loss of love and affection, loss of services, loss of support, medical expenses, and funeral expenses, jurisprudence implicitly considers emotional damages.

58. See LA. CIV. CODE ANN. art. 2315.2(A) (2010).

59. *Id.* (emphasis added).

(4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.⁶⁰

Because the law recognizes the rights of these classes of family members to recover for the wrongful death of their loved one, so too should the same family members have the right to be notified of their loved one's death while in-custody. The failure to notify a family member of a loved one's death can instill mental anguish.⁶¹ The purpose of damages granted after a successful wrongful death suit is to make the surviving family members whole for *their* loss resulting from the death.⁶² Certainly from Margie Hulitt Lee's perspective, the damages she suffered from Lee's death were intensified as a result of the statement announcing her son's in-custody death after she was told he had been "released."⁶³ Because the damages suffered after a loved one's death can be intensified through inadequate death notification process, implicit in the grant of a wrongful death cause of action to surviving family members is the right to be notified of an incarcerated family member's death. Moreover, without confirmation of an inmate's death, family members would be unable to bring their own wrongful death claims as sanctioned by the legislature.⁶⁴

60. LA. CIV. CODE ANN. art. 2315.2(A) (2010). The specified classes retain the right to file suit in the precise order listed. For example, if and only if Class 1 does not survive the decedent, may Class 2 bring a cause of action and so forth. The remainder of Code Article 2315.2 sets forth the following sub-provisions which may be instructive in defining the extent of a right to death notification:

B. The right of action granted by this Article prescribes one year from the death of the deceased.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

D. As used in this Article, the words "child", "brother", "sister", "father", "mother", "grandfather", and "grandmother" include a child, brother, sister, father, mother, grandfather, and grandmother by adoption, respectively.

E. For purposes of this Article, a father or mother who has abandoned the deceased during his minority is deemed not to have survived him.

Id.

61. See, e.g., Webster, *Families*, *supra* note 14 (describing emotional experiences of family members who were not notified after their loved ones died at OPP).

62. *Dakmak v. Baton Rouge City Police Dep't*, 2012-1468, p. 14 (La. App. 1 Cir. 9/4/14); 153 So. 3d 498, 509 ("Wrongful death claims are meant to compensate the survivors designated by La. C.C. art. 2315.2 for their own injuries arising from the loss of the decedent."); see also LA. CIV. CODE ANN. art. 2315.2 (2010) (listing the designated survivors).

63. See Webster, *Families*, *supra* note 14.

64. Prerequisite to bringing any such suit would admittedly be that the death was first known, and second, caused "due to fault of another." See LA. CIV. CODE

B. CURRENT TREATMENT OF DEATH NOTIFICATION PROCEDURES IN LOUISIANA STATE PRISONS

The law governing Louisiana state prisons is set forth in Title 15 of the Louisiana Revised Statutes.⁶⁵ The Revised Statutes do not currently contain a specific provision governing notification of a deceased inmate's next-of-kin in the event of an in-custody death. Instead, the Revised Statutes address only notification procedures in the event of "release or escape of [an] inmate."⁶⁶ Sub-provision A of title 15, section 549 sets requirements for notification of particular individuals in the event of certain types of prisoners' release or escape.⁶⁷ Primarily, sub-provision A requires the Department of Public Safety and Corrections to notify of an inmate's release "at the earliest possible date, and in no event later than ten days before release, except in the event of escape or emergency furloughs."⁶⁸ "Notification" under section 549 requires sending a written notice of the activities⁶⁹ of an inmate "convicted of a sex offense or a criminal offense against a victim who is a minor."⁷⁰ The following persons should receive notification of a criminal's release or escape must be sent to both:

- (1) The chief of police of the municipality in which the inmate will reside or in which placement will be made in a work release program.
- (2) The sheriff of the parish in which the inmate will reside or in which placement will be made in a work release program.⁷¹

Upon written request, the following persons shall be given

ANN. art. 2315.2(A) (2010). Without confirmation that a death has occurred, family members would be unaware of the need to investigate an improper cause of death promptly. Without swiftness in investigating the cause of an inmate's death, the facts needed to bring a wrongful death claim may go undiscovered.

65. See LA. STAT. ANN. tit. 15 (2012, 2015, & Supp. 2016).

66. See LA. STAT. ANN. § 15:549 (2012).

67. See *id.* § 15:549(A)–(B) (requiring notification of government officials, but giving special care to victims and witnesses to crimes by requiring notification of release or escape upon their request); see also *infra* Section II(C) (detailing VINELink notification system, offering notice of release or escape of inmates upon victim requests).

68. LA. STAT. ANN. § 15:549(A) (2012).

69. "[P]arole, community placement, work release placement, furlough, or escape" classify as activities requiring notification. See *id.*

70. *Id.*

71. *Id.*

notification in the event of an escape or release of “a specific inmate convicted of a sex offense or a criminal offense against a victim who is a minor”:

- (1) The victim of the crime for which the inmate was convicted.
- (2) Any witnesses who testified against the inmate in any court proceedings involving the offense.
- (3) Any person specified in writing by the prosecuting district attorney.⁷²

Sub-provision C of section 549 ensures confidentiality from public records of the notice itself and confidentiality of information of other persons noted in writing by the prosecuting district attorney requesting the notice.⁷³ Further, sub-provision C protects confidentiality of “any victim, a relative of the victim, or witness” requesting notice.⁷⁴

Detailing this statute is important when considering the depth of treatment Louisiana has given some forms of notification requiring prisoners. Though the aims of section 549, to protect victims and the public at large, differ from the right of a family to notification of a loved one’s passing, section 549 of Title 15 is indicative of the feasibility of detailed notification procedures regarding inmate activities.

C. LAVNS: LOUISIANA AUTOMATED VICTIM NOTIFICATION SYSTEM

The Louisiana Automated Victim Notification System (LAVNS) also provides for notification by offering victims

72. LA. STAT. ANN. § 15:549(B) (2012).

73. *Id.* § 15:549(C).

74. *Id.*; see also *id.* § 15:549(D)–(I). Summarily, sub-portion D details notification requirements in the event of escape of an “inmate convicted of a sex offense or a criminal offense against a victim who is a minor.” Sub-portion E requires sending notification destined for a victim or witness under the age of sixteen to that minor’s “parents, tutor, or legal guardian.” Sub-portion F details to which mailing address the Department of Public Safety and Corrections shall send notices required under Section 549. Sub-portion G eliminates liability for chief of police of a municipality or sheriff of a parish for “failing to request in writing a notice provided in this section.” The remaining sub-provisions, H and I, require the state to provide “the electronic mail address or addresses and instant message names or names collected for the sex offender registry” to any “commercial or non-profit entity” that requests notification to promote child safety.

automated reports on inmate status changes.⁷⁵ However, the LAVNS “status changes,” for which notification is provided through the system, *do not* include a notification option regarding an inmate’s in-custody death.⁷⁶ The goal of LAVNS is to provide the specific victims of a crime with notification of inmate release in an effort to promote safety.⁷⁷ LAVNS is provided by the Office of the Governor and the Louisiana Commission on Law Enforcement.⁷⁸ Further, LAVNS operates as Louisiana’s branch of VINE (Victim Information and Notification Everyday), the National Victim Notification Network.⁷⁹

VINE offers “victims and other concerned citizens” across the country access to “timely and reliable” information about criminal cases and custody status of offenders.⁸⁰ VINE services are offered twenty-four hours a day to provide updates to enrolled participants through phone, email, fax, letter, or electronic communications for the deaf.⁸¹ Any individual can register online through VINELink by designating contact information, creating a personalized four-digit pin for system login, and selecting which inmates they wish to be notified about; thereafter, the VINELink system will contact the registrant in the event of an inmate’s

75. See Appriss, Inc., *Louisiana Automated Victim Notification System—LAVNS*, VINELINK, <https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=19000> (last visited Jan. 19, 2016) [hereinafter Appriss, *LAVNS*].

76. *Id.* But see *infra* Section IV(A) (discussing some states’ incorporation of death notification into their respective state Victim Notification programs).

77. According to the LAVNS brochure, “LAVNS is designed to provide you with quick and easy access to offender information and to assist you in preparing for an offender’s release. DO NOT depend solely on LAVNS or any other program for your safety.” See LAVNS: LOUISIANA AUTOMATED VICTIM NOTIFICATION SYSTEM 2 (n.d.), <http://cle.la.gov/programs/uploads/LAVNSEnglishBrochure.pdf>.

78. *Id.* at 1.

79. VINELink’s registration website offers drop-down menu designating participating states and indicating each state’s respective implementation of VINELink. Appriss, Inc., *What is Vine?*, VINELINK, <https://vinelink.com/#/home> (last visited Jan. 16, 2016) [hereinafter Appriss, *What is Vine?*]; see also Appriss, Inc., *About VINELink*, VINELINK, <https://web.archive.org/web/20150225163815/https://www.vinelink.com/vinelink/initMap.do> (last visited Jan. 16, 2016) (a map of participating states).

80. *Register for Notifications*, APPRISS 00:10, <http://www.appriss.com/vinevideo.html> (last visited Jan. 16, 2016). A VINELink informational video notably fails to list in custody death notifications as an option under the VINELink system. *Id.* at 00:42–01:02.

81. See *id.* at 00:00–00:18, 01:02–01:22; see also Appriss Inc., *VINELink Quick Reference Guide*, VINELINK, <https://www.vinelink.com/docs/VINELinkQuickReferenceGuide.pdf> (last visited Jan. 16, 2016) [hereinafter Appriss, *Quick Reference*].

status change.⁸² Nine states do not offer VINE statewide, but rather restrict service to certain counties.⁸³ South Dakota and Kansas are the only states not enrolled in the VINE program.⁸⁴

VINELink is a service provided by a privately owned and maintained company, and states contract with VINELink to provide services within their state.⁸⁵ The nationwide⁸⁶ VINE system was created in 1994 as a response to the death of Mary Byron.⁸⁷ Mary Byron's former boyfriend attacked and killed her following his release from prison, a release about which Byron and her family were not notified.⁸⁸ Byron's tragic death brought about VINE, which was created to avoid dangers to victims following inmates' releases and prevent lack of release notification for potential victims.⁸⁹ VINE notifies users, encompassing any concerned citizen who registers for the system, in the event of a change in a prisoner's status.⁹⁰

VINE saves money by eliminating the need to manually notify victims.⁹¹ In the event of a change in status, VINE will contact the registrant through the phone number or email provided for a specified period of time.⁹² Yet, this change in status is limited to events such as "release, transfer, or escape."⁹³ Some states, however, do offer a death notification option through their individual exercise of the VINELink system.⁹⁴ The use of death notification within VINE by these states illustrates the potential success of including such notification in every state-run

82. See Appriss, *Quick Reference*, *supra* note 81.

83. Montana, Arizona, Alabama, Georgia, West Virginia, Massachusetts, and New Hampshire offer VINE service in some counties. See Appriss, *What is Vine?*, *supra* note 79 (select "Arizona" in drop-down menu); *id.* (select "Georgia" in drop-down menu); *id.* (select "New Hampshire" in drop-down menu, then select "Discover More State Resources"); *id.* (select "Montana" in drop-down menu, then select "Discover More State Resources").

84. *Id.* (select "Kansas" and "South Dakota" in drop-down menu).

85. See generally Appriss, Inc., *VINELink Frequently Asked Questions*, VINELINK 3-4, <https://www.vinelink.com/docs/VINELinkFAQ.pdf> (last visited Jan. 19, 2016).

86. The VINE system is operated through the APPRISS data network, the nation's largest integrated criminal justice database. See *Register for Notifications*, *supra* note 80, at 01:46.

87. See *id.* at 00:18.

88. *Id.*

89. *Id.* at 00:42.

90. *Id.* at 00:00-00:10.

91. See *id.* at 01:57.

92. *Register for Notifications*, *supra* note 80, at 01:02.

93. *Id.* at 01:01.

94. See *infra* Section IV(A).

VINE program.⁹⁵ Although protecting Louisiana victims' rights to notification is the primary goal of VINE, the system exists in a format under which notification could also be provided to prisoners' families. Inmates' families, just as the families of victims, stand innocent in the eyes of the law and should be incorporated into the preexisting system to receive notification of the death of a Louisiana state prisoner.

D. LOCAL STUDY: EFFECTS OF THE NEW ORLEANS CONSENT DECREE ON DEATH NOTIFICATION PROCEDURES

In June 2013, the Eastern District of Louisiana approved a Consent Decree requiring an overhaul of the Orleans Parish Prison.⁹⁶ The process leading up to the Consent Decree began with a complaint filed on January 18, 2012 by three youth inmates against the Orleans Parish Sheriff, Marlin Gusman.⁹⁷ Thereafter, ten other inmates sought injunctive relief claiming that the sheriff, the wardens of OPP facilities, and OPP's medical and psychiatric doctors were violating inmates' Eighth and Fourteenth Amendment rights.⁹⁸ These ten inmates, alleging inadequate medical and mental health care while incarcerated, joined as named plaintiffs representing a class "consisting of all current and future OPP inmates."⁹⁹ Further, the class representatives claimed they were at a substantial risk of serious injury resulting from violent conditions in the jails.¹⁰⁰

Prior to these lawsuits, Sheriff Gusman had requested help from the National Institute of Corrections with jail staffing and emergency preparedness following Hurricane Katrina.¹⁰¹ This paved the path to the Consent Decree, as the National Institute of Corrections found "pervasive and longstanding problems" upon inspecting OPP.¹⁰² Later, in September 2010, the Department of

95. See *infra* Section IV(A).

96. See *Jones v. Gusman*, 296 F.R.D. 416, 423 (E.D. La. 2013) (certifying class and approving consent judgment); Consent Judgment, *Jones*, 296 F.R.D. 416 (No. 12-CV-00859), http://neworleans.macarthurjusticecenter.org/uploads/rsmjc-neworleans/documents/5_consent_decree.pdf.

97. *Jones*, 296 F.R.D. at 425.

98. *Id.*; see also *supra* Section II(A)(1) (discussing the Eighth and Fourteenth Amendment rights owed to inmates).

99. See *Jones*, 296 F.R.D. at 425.

100. *Id.*

101. See *Reshaping New Orleans*, *supra* note 1 (noting Gusman, who was serving his fourth term as Orleans Parish Sheriff, hoped to build a new prison with funds raised after Hurricane Katrina).

102. *Id.*

Justice reported to Sheriff Gusman that certain conditions in OPP violated the constitutional rights of inmates.¹⁰³ After an April 2012 visit to OPP, the Department of Justice stated that “[t]he conditions in OPP fail to meet the most basic obligation of prison officials to provide humane conditions of confinement.”¹⁰⁴ The class-action lawsuit followed these investigations.¹⁰⁵ As a result, Judge Lance M. Africk issued a consent decree demanding an overhaul of the OPP.¹⁰⁶

The provisions of the Consent Decree could improve the conditions surrounding in-custody deaths at OPP.¹⁰⁷ Yet, the Consent Decree does not directly address notification of next-of-kin. Instead, the relevant Consent Decree provisions focus only on notification of the Department of Justice and the lawyer for the class of plaintiffs in the event of an inmate death.¹⁰⁸ Specifically, section VIII(B) of the Consent Decree requires the Orleans Parish Sheriff’s Office (OPSO) to notify the Monitor of a death within twenty-four hours.¹⁰⁹ The Monitor is then required to forward the death notice to the Department of Justice (DOJ) as well as the Southern Poverty Law Center (SPLC).¹¹⁰ OPP then must forward the Monitor any medical or mental health reports

103. *Reshaping New Orleans*, *supra* note 1. Jail security expert Jeffery Schwartz worked with the Department of Corrections in over thirty states for over forty-five years and testified that OPP was worst jail he had ever seen on duty stating: “OPP is plagued by suicides and other in custody deaths, rapes, stabbings, and beatings.” *Id.*

104. *Id.*

105. *Id.* (stating the United States successfully intervened in the suit January 24, 2012).

106. *See id.* at 45:00. Although the City of New Orleans had fought for a federal receiver to take over the prison reform operation, Judge Africk refused. *Id.* In addition to the consent decree governing prison operations, a massive Consent Decree was entered into in July 2012 between the city and the federal government to fix the New Orleans police force. *Id.* In August 2014, a Consent Decree Monitor was appointed to follow up on the police reforms. *Id.*

107. *See* Consent Judgment, *supra* note 96, at 39 (requiring the sheriff to notify the Consent Decree Monitor within twenty-four hours of any in-custody death); *see also id.* at 5–10 (governing Use of Force Policies and Procedures, Use of Force Training, and Use of Force Reporting—ideas related to of the prohibition on cruel and unusual punishment addressed above).

108. *See id.* at 39–40.

109. *Id.*

110. *Id.* In 2013, Judge Africk transferred litigation responsibilities for the *Jones v. Gusman* federal lawsuit, which had originated with the New Orleans office of the Southern Poverty Law Center (SPLC) to the Roderick and Solange MacArthur Justice Center. *See MacArthur Justice Center Takes Lead in Orleans Parish Prison Lawsuit*, MACARTHUR JUST. CTR. (Oct. 23, 2013), <http://neworleans.macarthurjusticecenter.org/Projects/Motion-Granted-to-Enroll-MacArthur-Justice-Center-in-Orleans-Parish-Prison-Lawsuit.html>.

on the deceased.¹¹¹ Even if the Consent Decree provisions were adequate to address death notification to next-of-kin, any provision's effect would be limited to Orleans Parish. Though a potential solution in one parish is promising, even a perfectly executed local consent decree could not remedy the lack of statewide death notification procedures across Louisiana.

III. ANALYSIS

A. FEDERAL BUREAU OF PRISONS DEATH NOTIFICATION PROCEDURES

The United States Department of Justice, through the Federal Bureau of Prisons, offers death notification instruction to institutions operating within the federal prison system.¹¹² The program statement requires the jail warden (or designee) to assemble the following immediately upon an inmate's death: the name, register number, and date of birth of the deceased inmate; the deceased inmate's offense and sentence; the date, time, and location of death of the deceased inmate; the apparent cause of death of the deceased inmate; the investigative steps being taken, if necessary to investigate the death; the name and address of survivor or designee of the deceased inmate; information on notifications made; information regarding status of autopsy requests; and, finally, a medical history related to death.¹¹³ Policies detail required notification of bureau officials as well as certain court officials.¹¹⁴

The Federal Bureau of Prisons policy on notification of next-of-kin requires the jail warden (or designee) to telephone "the next-of-kin designated on an Acknowledgement of Inmate form" immediately to "communicate the circumstances surrounding an in-custody death."¹¹⁵ In the event that an inmate has not named

111. Consent Judgment, *supra* note 96, at 39–40.

112. See FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, NO. 5553.07, ESCAPES/DEATHS NOTIFICATIONS (2006) [hereinafter DEATHS NOTIFICATIONS], https://www.bop.gov/policy/progstat/5553_007.pdf.

113. *Id.* at 6.

114. *Id.* at 7–8. In accordance with provision 9.c of the policy, the federal jail warden "must send a letter to the appropriate sentencing U.S. District Judge(s) that reports the circumstances of the death." *Id.* at 8. Additionally, "[c]opies of this letter must be mailed to the U.S. Attorney(s) for the district(s) in which the inmate was sentenced, the Chief U.S. Probation Officer, and the Regional Director." *Id.* Further, "correspondence to federal courts must contain the federal docket number and the inmate's register number." *Id.*

115. *Id.* at 7. This form, also known as a continuation sheet, contains information

a next-of-kin on the form, the employee must still attempt to locate and notify the next-of-kin of the death.¹¹⁶ The policy explains that the effort is necessary because next-of-kin are those standing to make decisions regarding the deceased's remains and property.¹¹⁷ The federal jail employee is instructed to consult other parts of the Inmate Central File or the prison chaplain for help to notify the inmate's family.¹¹⁸ Additionally, Letters of Condolence are addressed under 9.b.2.¹¹⁹ Again, the warden is required to mail a letter of condolence to the next-of-kin and advise that individual of the circumstances of the death.¹²⁰ In the event that the death occurred by natural cause, the warden must provide a brief summary of the inmate's cause of death.¹²¹ Also, reference to the cause of death is appropriate in an instance where an accident rather than foul play led to the death.¹²² Alternatively, in the event that suspicious circumstances surround the death, the warden is instructed to notify the next-of-kin that the death is under investigation and thus, details of the case may not be provided.¹²³ Lastly, notification policies instruct the warden to send a copy of the death certificate to the person designated to receive the deceased inmate's remains.¹²⁴

Special notification provisions apply when the inmate was a federal military prisoner who had not been discharged from service.¹²⁵ Different notification is required in such a case "to ensure proper military protocol is followed so that military officials make in-person notification of the death to the inmate's next-of-kin to determine the appropriateness of a military

such as inmate's emergency contacts and is located in the Inmate's Central File. *Id.*

116. DEATHS NOTIFICATIONS, *supra* note 112, at 7.

117. *Id.*

118. *Id.* at 8. Under sub-provision 9.b.1 (Telephonic Notification), the policy specifies that a certain prison worker, namely a Case Management Coordinator, will ordinarily arrange the disposition of the inmate's remains with a Supervisory Contract Specialist. *Id.* at 7. The most recent policy statement concerning an inmate's central file was issued on January 9, 2015. FED. BUREAU OF PRISONS, U.S. DEPT OF JUSTICE, NO. 5800.17, INMATE CENTRAL FILE, PRIVACY FOLDER, AND PAROLE MINI-FILES (2015) [hereinafter INMATE CENTRAL FILE], http://www.bop.gov/policy/progstat/5800_017.pdf.

119. *See* DEATHS NOTIFICATIONS, *supra* note 112, at 8.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. DEATHS NOTIFICATIONS, *supra* note 112, at 8–9.

funeral, and the disposition of property.”¹²⁶ Instead of directly notifying next-of-kin of the death, the bureau staff must send notification and next-of-kin information from the BP-408 form either to the United States Disciplinary Barracks or to the Department of the Army.¹²⁷ Alternatively, if a military prisoner has been discharged, “[n]ormal next-of-kin notification procedures . . . should be followed.”¹²⁸

Other exceptions to the standard form of notification are outlined in section 9 and are detailed in section 9.e.¹²⁹ For example, these sections provide alternative notification procedures for non-citizen detainee in-custody deaths, deaths of inmates held in contract facilities, and notification of victims or witnesses.¹³⁰ The idea of notification is addressed in federal prisons, although exceptions are made in certain occasions. This begs the question as to why there is no consistent treatment, and often a complete lack of treatment, of next-of-kin death notification in state prison systems.

One consideration is frequency of deaths occurring in federal prisons versus the frequency of in-custody deaths in state-run prison systems. A higher death rate results in a greater task of reporting such deaths to next-of-kin. Further, as death rates rise and the task of notification builds, so do costs. Therefore, if state prisons experience more in-custody deaths than federal penitentiaries, this perhaps explains the resistance to standardized next-of-kin death notification in the state sphere.

The most recent reports of the Federal Deaths in Custody Reporting Program (DCRP) are telling on this issue.¹³¹ The DCRP originated in 2000 under the Death in Custody Reporting Act of

126. DEATHS NOTIFICATIONS, *supra* note 112, at 8–9. In-person military notification procedures are analyzed subsequently in this comment. *See infra* Section III(C).

127. DEATHS NOTIFICATIONS, *supra* note 112, at 9.

128. *Id.*

129. *Id.* at 9–10.

130. *Id.*

131. The Deaths in Custody Reporting Program (DCRP) gathers records of inmate deaths from each states’ prison system and “approximately 2,800” local jail jurisdictions. *See Data Collection: Deaths in Custody Reporting Program (DCRP)*, BUREAU JUST. STAT., <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=243> (last visited Jan. 21, 2016). Information is also collected to record deaths occurring during arrest. *Id.* The program began in 2000 for jails, in 2001 for state prisons, and in 2003 for deaths in the process of arrest. *Id.* Collection of records from state juvenile correctional agencies began in 2002, but was discontinued in 2006. *Id.* The most recent statistics and reporting available through DCRP are from 2012. *Id.*

2000.¹³² According to the DCRP, “[i]n 2012, a total of 3,351 deaths . . . occurred in state prisons.”¹³³ The number of deaths in federal prisons, however, only totaled 350 deaths and represented a decline of ten percent in 2012.¹³⁴ Yet, whatever the cost of implementing *some notification system*, the cost is reasonable in light of the anguish and distress caused by the failure to notify families and the potential of the cover-up of in-custody deaths.

B. DEATH NOTIFICATION PROCEDURES IN OTHER STATES

Several states currently have death notification of next-of-kin procedures in place to address in-custody deaths. While Louisiana has yet to codify or otherwise legislate on the matter, Iowa, Idaho, Texas, and Virginia offer examples of measures in place.

Iowa’s policies are instructive as to general death notification principles, particularly expressing ideal notification procedures to respect dignity of life.¹³⁵ The Iowa Crime Victim Assistance Division advocates five principles of death notification: “in person, in time, in pairs, in plain language, and with compassion.”¹³⁶ The

132. Death in Custody Reporting Act of 2000, Pub. L. No. 106-297, 114 Stat. 1045. When the act was passed, only California and Texas collected information on all types of arrest-related deaths. *Data Collection: Deaths in Custody Reporting Program (DCRP)*, *supra* note 131. For the remaining forty-eight states and the District of Columbia, the new DCRP collection was the first attempt to perform a comprehensive count of all arrest-related deaths. *Id.* The DCRP collects data on persons who died while in the physical custody “of the 50 state departments of corrections” or the nearly “2,800 local adult jail jurisdictions nationwide.” *Id.* The DCRP provides the *only* national statistic compilation of information about deaths in “adult correctional facilities.” *Id.*

133. MARGERET E. NOONAN & SCOTT GINDER, BUREAU OF JUSTICE STATISTICS, MORTALITY IN LOCAL JAILS AND STATE PRISONS, 2000–2012—STATISTICAL TABLES 1 (2014), <http://www.bjs.gov/content/pub/pdf/mljsp0012st.pdf>. State prisoner death counts include the death of any inmate “held in any private prison facility under contract to the state’s department of corrections.” *Id.* at 30. State prisons also report the deaths occurring outside the prison facility when a prisoner has been sent for treatment services or for work-release programs. *Id.*

134. *Id.* at 3, 25; *see also id.* 6–28 tbls.1–27 (providing more detailed statistical breakdowns of deaths in custody from 2001–2012); *Data Collection: Deaths in Custody Reporting Program (DCRP)*, *supra* note 131 (“Federal prisons are not covered by PL. 106-297, but aggregate death counts are reported to B[ureau of] J[ustice] S[tatistics] by the Bureau of Prisons.”).

135. CRIME VICTIM ASSISTANCE DIV., IOWA DEPT’ OF JUSTICE, IN PERSON, IN TIME—RECOMMENDED PROCEDURES FOR DEATH NOTIFICATION (1992) [hereinafter IN PERSON, IN TIME]. These policies offer general guidance for an array of death notification contexts and are not restricted or tailored to notification in the event of an inmate’s death.

136. *Id.* at 2–4.

Office of the Attorney General for the State of Iowa, in cooperation with the Office of the Chief Medical Examiner and the National Association of Medical Examiners (N.A.M.E.), produced *In Person, In Time—Recommended Procedures for Death Notification* in 1992.¹³⁷ Since that time, “[m]any law enforcement agencies as well as Medical Examiners and Coroners throughout the country [have] adopted this manual as the model for making death notifications.”¹³⁸

The first basic principle is that notification be made “in person,” not by telephone, even if the survivor lives far away.¹³⁹ The guide instructs to avoid death notification over a police radio.¹⁴⁰ Second, the guide instructs for death notification “in time—and with certainty,” meaning that notification be given as soon as possible following absolute certain identification of the decedent.¹⁴¹ Notification of next-of-kin as well as others who live in the decedent’s household (including roommates and unmarried partners) should occur at this time.¹⁴² “In pairs,” another guiding principle issued in the manual, advises that two people should always be present for notifications because of the severe emotional or physical reactions that may result during the delivery of notification.¹⁴³ A medical examiner, chaplain, clergy member, or other close friend should accompany one law enforcement officer, in uniform.¹⁴⁴ Moreover, two vehicles should be taken in case of problematic reactions to notification.¹⁴⁵ The guide continues, instructing notifiers to deliver news “in plain language” avoiding the use of confusing phrases such as “your family member was lost.”¹⁴⁶ Additionally, notification on a doorstep should be avoided in favor of delivering news in the privacy of a home’s interior.¹⁴⁷ Lastly, notification should be completed “with compassion,” specifically instructing “[i]t is

137. IN PERSON, IN TIME, *supra* note 135, at v.

138. EMILY MOLDOVAN, THE BAD NEWS BEARERS: THE MOST DIFFICULT ASSIGNMENT IN LAW ENFORCEMENT 11 (2009), <http://hitpages.com/doc/5208293165236224/1>.

139. IN PERSON, IN TIME, *supra* note 135, at 2.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 3.

144. *Id.*

145. IN PERSON, IN TIME, *supra* note 135, at 3.

146. *Id.*

147. *Id.*

better to let a tear fall than appear cold and unfeeling.”¹⁴⁸ Further, notification should neither impose any religious beliefs on a survivor, nor simply notify the survivor and leave.¹⁴⁹ Instead, notification should provide “information, support, and direction.”¹⁵⁰

While the Iowa guidelines are not targeted particularly to inmate deaths, they illuminate the sensitivity of the notification procedure. Iowa’s policies have influenced the medical field and coroners’ offices across the country.¹⁵¹ The dignity owed prisoners under the Eighth Amendment and Due Process Clause of the Fourteenth Amendment would be upheld by implementing the Iowa policies in prison death notification procedures.

The notification procedures employed in Idaho also provide guidance. The Idaho Department of Corrections (IDOC) sets forth detailed instructions regarding in-custody deaths of an offender. This policy specifically provides instructions for notification of next-of-kin.¹⁵² Just as in Louisiana, the Idaho system requires that victims be notified.¹⁵³ Yet unlike Louisiana, Idaho requires that notification of death be made “as soon as possible and in a professional manner” to the emergency contacts indicated on the deceased inmate’s Emergency Contact Information Form.¹⁵⁴ “Function roles and responsibilities” are also set forth, requiring the facility head (or designee) to take action to notify next-of-kin.¹⁵⁵ First, the facility head must “[o]btain the offender’s emergency contact information;” then it must “[c]ontact the offender’s next-of-kin and/or secondary contacts.”¹⁵⁶ According to the intake form, if one contact is made

148. IN PERSON, IN TIME, *supra* note 135, at 4.

149. *Id.*

150. *Id.*

151. MOLDOVAN, *supra* note 138, at 11.

152. IDAHO DEP’T OF CORR., STANDARD OPERATING PROCEDURE 312.02.01.001, DEATH OF AN OFFENDER (2012), <http://www.idoc.idaho.gov/content/policy/973>.

153. *Id.* at 6.

154. *Id.* at 7. Offenders must complete an Emergency Contact Information Form at the Receptionist/Diagnostic Unit during intake and upon annual reclassification or marriage while in custody. *Id.* The inmate may also approve and list one individual or charitable organization to whom the deceased’s property and Offender Trust Account will be released in the event of a death. *Id.*

155. *Id.*

156. *Id.*; *see also* Emergency Contact Information Form (Offender), IDAHO DEP’T OF CORR., http://www.idoc.idaho.gov/sites/default/files/webfm/documents/about_us/policies_and_forms/formspublic/emergency_contact_information_form_offender.pdf (last updated Dec. 2, 2014).

from the form, the IDOC requires no further contact.¹⁵⁷ In the event that no one listed on the form can be contacted, “IDOC will attempt to locate next of kin or an approved visitor.”¹⁵⁸ Finally, the Facility Head must document the date and time of each contact.¹⁵⁹

While the general notification principles set forth in Iowa (notification in time, in pairs, in plain language, and with compassion) are not implemented through these detailed Idaho procedures, notification is arguably more feasible under the Idaho model. While the in-person, compassionate procedures considered under the Iowa standard is preferable to maintain respect for each life lost, the Idaho model, in requiring only a phone call, is notably less costly and more time efficient.

Lowering the standard set by both Iowa and Idaho, Texas addresses notification in title 1, chapter 49 of its Code of Criminal Procedure and in the government code address notifications which apply to state-run institutions.¹⁶⁰ Notification of deaths in custody under the Code of Criminal Procedure is restricted to “inform[ing] the justice of the peace of the precinct where the penal institution is located.”¹⁶¹ The obligation to inform the justice of the peace is assigned to the sheriff or “other person in charge of the penal institution.”¹⁶² Additionally, Texas law requires:

If a person dies while in the custody of a peace officer or as a result of a peace officer’s use of force *or if a person incarcerated in a jail, correctional facility,¹⁶³ or state juvenile facility dies*, the director of the law enforcement agency of which the officer is a member or of the facility in which the person was incarcerated *shall investigate the death and file a written report of the cause of death with the attorney general no later than the 30th day after the date on which the person in custody or the incarcerated person died.* The director shall make a good faith effort to obtain all facts relevant to the

157. See Emergency Contact Information Form (Offender), *supra* note 156.

158. *Id.*

159. See IDAHO DEP’T OF CORR., *supra* note 152, at 7.

160. TEX. CODE CRIM. PROC. ANN. arts. 49.01–.35 (West 2006 & Supp. 2015).

161. TEX. CODE CRIM. PROC. ANN. art. 49.18(a) (West Supp. 2015).

162. *Id.* art. 49.18(b).

163. *Id.* art. 49.18(d)(1) (“‘Correctional facility’ means a confinement facility or halfway house operated by or under contract with any division of the Texas Department of Criminal Justice.”).

death and include those facts in the report. *The attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person.*¹⁶⁴

A critical analysis of Texas's notification provision brings to light its failure to address direct next-of-kin notification in the event of in-custody deaths. The state has provisions in place demanding notification of the justice of the peace and the issuance of a written report no later than thirty days following the date of death.¹⁶⁵ However, if no measures are demanded to notify next-of-kin prior to the issuance of that written report, a potential thirty-day gap could occur before families are made aware of an inmate's death. Further, a family seeking to receive the written report must do so through a request to the attorney general, who retains discretion to avoid turning over any information deemed "privileged."¹⁶⁶ Thus, not only is the time gap problematic, but because of the ability to label key information as "privileged," problems also may arise in identifying the precise cause of the in-custody death.

While Texas's notification standards are an improvement on Louisiana's lack of notification policies, Texas's policies offer only a starting point for notification. Idaho's notification policy and Iowa's "in person and in time" notification method should serve as a model for Louisiana in crafting notification procedures. Along with turning to other states for models, Louisiana should look outside the prison context to assess death notifications in other settings where the government holds some form of custodial control over the deceased.

C. DEATH NOTIFICATION IN OTHER CONTEXTS: SETTING THE "CEILING" FOR NOTIFICATION PROCEDURES

Death notification procedures in other contexts may be instructive for state prison systems. Notification of next-of-kin in the event of a death occurs in settings outside the prison context

164. TEX. CODE CRIM. PROC. ANN. art. 49.18(b) (West Supp. 2015) (emphasis added). *But see id.* art. 49.18(c) ("Subsection (b) does not apply to a death that occurs in a facility operated by or under contract with the Texas Department of Criminal Justice *if the death occurs under circumstances described by Section 501.055(b)(2), Government Code*" (emphasis added)). The provision of the Government Code refers to inmates who have been lawfully executed. *See* TEX. GOV'T CODE ANN. § 501.055(b)(2) (West 2012).

165. TEX. CODE CRIM. PROC. ANN. art. 49.18(b) (West Supp. 2015).

166. *Id.*

where the government has some degree of custody over the deceased, specifically in the military and state-run long-term care psychiatric facilities. Much like inmates, persons in these settings experience restrictions on freedom of movement and function under a degree of governmental control. Thus, if death notification to next-of-kin is due in other contexts where the government exercises custody over the deceased, though different in many aspects from the penitentiary setting. These notification procedures followed in state-run medical facilities and the military are ideal notifications and set the “ceiling” for death notification procedures.

For example, death notification is required in certain state-run psychiatric facilities where government regulations monitor patient care. In Louisiana, the Department of Health and Hospitals sets forth regulations regarding Psychiatric Residential Treatment Facilities (PRTF).¹⁶⁷ Louisiana PRTFs are non-hospital facilities that provide inpatient psychiatric services to those under twenty-one years of age.¹⁶⁸ The Louisiana Administrative Code details minimum licensing standards for PRTF and the notification procedures required in the event that a patient dies while in PRTF care.¹⁶⁹ Under these regulations, the PRTF must report a death of a facility resident (classified as a “serious occurrence”) to both the Health Standards Section (HSS) and the Department of Children and Family Services, Child Welfare Division.¹⁷⁰ In regards to next-of-kin notification, “in the case of a minor, the facility must notify the resident’s parent(s) or other legal guardian(s) as soon as possible, and in no case later than 24 hours after the serious occurrence.”¹⁷¹ Since both PRTF and prisons retain custody of patients and prisoners respectively, this mandatory reporting to next-of-kin in PRTF should be noted. Further, notification in the inpatient psychiatric context should be applicable to the inmate context given the high number of mentally ill inmates in state and local prisons. Specifically, Orleans Parish Prison currently faces pressures from organizations such as the “Stepping Up Initiative,” which advocate for the diversion of persons with mental illness out of

167. Health Standards Section, *Psychiatric Residential Treatment Facilities*, LA. DEPT HEALTH & HOSPS., <http://new.dhh.louisiana.gov/index.cfm/directory/detail/6924> (last visited May 5, 2015).

168. *Id.*

169. LA. ADMIN. CODE tit. 48, pt. 1, §§ 9007–9037 (2015).

170. *Id.* § 9035(G).

171. *Id.* § 9035(G)(2).

jails and back into the community.¹⁷² If prisons are so heavily populated with mentally ill persons, the death notification procedures exercised in PRTF should be carried over to the prison system.

The death notification procedure for the military provides an example of the ultimate dignity-based protocol. Like prisoners and PRTF patients, military service members are subject to a certain degree of government control. Although death notification of next-of-kin should never be taken lightly, highest regard is owed in the military context. Special respect is owed to the sacrifices of service members, and accordingly, death notifications in this context are certainly given heightened attention and respect. A survey of death notification procedures in the military context is thus only instructive to detail a “ceiling” for ideal procedures. Specifically, military death notifications should set the highest standard that could exist in a case where the government exercises a degree of control over the deceased, and thereby owes their family notification of their next-of-kin’s death.

The United States military handles death notification through regimented practices that have evolved over time. For instance, during World War II and the Korean War, the military sent death notification by telegram.¹⁷³ Modern practices involve special training of Casualty Notification Officers who are charged with in-person delivery of news to service members’ families.¹⁷⁴ Military regulations requiring that information of a military death not be released until twenty-four hours after survivors are notified ensure that families receive news of the death first and before they hear of the death by other means.¹⁷⁵ This simple premise is one that could be implemented in jail policies to avoid situations such as those that occurred to the Lee family.¹⁷⁶

Regulations require that respect for the service member’s sacrifice is honored through in-person notification delivered by trained and uniformed service representatives. To convey respect

172. See Janet Hays, Opinion, *Don’t Build a Bigger Jail. Focus on Community Care for Mental Illness* (Aug. 12, 2015, 9:49 AM), http://www.nola.com/politics/index.ssf/2015/08/orleans_jail_mentally_ill.html.

173. MOLDOVAN, *supra* note 138, at 13.

174. *Id.*

175. See Army Casualty Program, AR638-8, § 1-12 2015, http://www.apd.army.mil/jw2/xmldemo/r638_8/main.asp (last visited January 28, 2016).

176. See *supra* Section II (A) (2).

for the service member's sacrifice, the representative delivering a notification must do so wearing a Class "A" military uniform and must "present a soldierly appearance when making notification."¹⁷⁷ Notification of next-of-kin of a deceased soldier should occur within four hours after learning of the death.¹⁷⁸ Further, notification must take place between 6:00 a.m. and 10:00 p.m.¹⁷⁹ In the event that efforts to contact primary next-of-kin fail, policy recommends that the Casualty Notification Officer contact the Casualty Notification Command for further assistance.¹⁸⁰

Chaplain Eric Wester spoke to NPR regarding his experience with military death notifications.¹⁸¹ Describing the symbolism behind death notification in the military, Wester described the requirement of driving to the survivors' home in a military car and the wearing of Class A uniforms.¹⁸² According to Wester, because of these symbols, many families understood the message and began to grieve the moment they opened their doors.¹⁸³ Wester described the two-person notification team—one officer to deliver the news at the home and the accompanying officer, designated the "survivor assistance officer," to contact the family twenty-four hours after the notification to address other issues, such as arranging funerals.¹⁸⁴ By designating only one officer to officially deliver the news, the family member only links the

177. MOLDOVAN, *supra* note 138, at 13. Notably, uniform requirements during a notification would not be relevant to the case of death of an inmate.

178. *Id.* at 13.

179. *Id.* ("The time limits established for notification may have to be adjusted due to distance involved or other conditions, such as adverse weather.")

180. *Id.*

181. *Talk of the Nation: A Grim Task: Military-Death Notification* (Nat'l Pub. Radio broadcast May 27, 2013) [hereinafter *A Grim Task*], <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=186452175&m=186452953>.

Solemnity and respectful notification of deceased militant's family members traces back far into history. For example, in 1864 Abraham Lincoln wrote to a mother who lost five sons in the Civil War:

But I cannot refrain from tendering you the consolation that may be found in the thanks of the Republic they died to save.

I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

Jason Emerson, *America's Most Famous Letter*, AM. HERITAGE (Feb.–Mar. 2006), <http://www.americanheritage.com/content/america's-most-famous-letter> (quoting the "Letter to the Widow Bixby" and arguing that Abraham Lincoln is its author).

182. *A Grim Task*, *supra* note 181.

183. *Id.*

184. *Id.*

devastating news to one face, and is then more likely to accept aid from the survivor assistance officer.¹⁸⁵ Military training efforts for Casualty Notification Officers include videos simulating a variety of family reactions that the officers could encounter.¹⁸⁶

Despite intensive training and efforts to respect the life of the service member, the military notification system is not without flaws. Numerous documented incidents demonstrate how easily the messenger can make errors of judgment during notification.¹⁸⁷ The *New York Times* has reported that “scores of families have gone head-to-head with a casualty system that, in their experience, has failed to compassionately and competently guide them through the harrowing process that begins after a soldier’s death.”¹⁸⁸ One family’s complaint occurred after a Casualty Notification Officer refused to allow a father to view his son’s remains prior to burial.¹⁸⁹ Other families assert that officers refused to address their questions regarding circumstances of death for months following notification.¹⁹⁰

Since the end of the Vietnam War, our country has had an “all-volunteer military.”¹⁹¹ A high degree of respect is owed to the lives of those who die in service, and the symbolism embedded in the military notification process attempts to deliver that respect. While the symbolic element of notification would not be as prevalent in the event of a prisoner death, the military procedures serve as an ideal model for upholding dignity through the notification process. First, the in-person notification process utilized by the military could also be implemented in the prison system. Further, following suit with the military’s training of Casualty Notification Officers, some form of instruction could be administered to wardens and other prison officials who must notify next-of-kin. By educating those who must deliver such news, the potential for abuse in notification would be diminished. Finally, the time restrictions on notification in the military context are also feasible to be implemented in jail systems.

185. *A Grim Task*, *supra* note 181.

186. See Gregg Zoroya, *Army Focuses on Better Relations with Next of Kin*, USA TODAY (Oct. 29, 2006, 10:13 PM), http://www.usatoday.com/news/nation/2006-10-29-army-family-relations_x.htm.

187. *Id.*

188. Lizette Alvarez, *In Notification of Military Deaths, More Pain*, N.Y. TIMES (Apr. 7, 2006), <http://www.nytimes.com/2006/04/07/us/07notify.html>.

189. *Id.*

190. *Id.*

191. *A Grim Task*, *supra* note 181.

Specifically, state prisons should adopt a policy of restricting public release of information regarding inmate death until after a family has been notified in an effort to avoid confusion and shock to next-of-kin.

IV. PROPOSAL

This Comment proposes several options for Louisiana to implement some form of death notification to next-of-kin in the event of in-custody deaths. First, incorporation of death notices to the preexisting VINE nationwide system would offer a notification option to families seeking updates regarding inmates' health status. Beyond this systematic change that could be implemented nationwide, this Comment recommends adding a specific provision to the Louisiana Revised Statutes governing death notification for next-of-kin. Further, this Comment suggests classes of persons to be designated "next-of-kin" be notified in the event of an in-custody death.

A. IMPLEMENTING DEATH NOTIFICATION INTO VINE AND LAVNS

Addition of a "death of inmate" status update within the preexisting national VINELink system¹⁹² would serve the function of timely notification of in-custody deaths. While this method would not implement the "in person" policies recommended by the Iowa guidelines,¹⁹³ it would be a step towards some sort of notification within a proven and successful framework. Just as VINE offers up to date information regarding changes in inmate status, such as release,¹⁹⁴ there is benefit to providing real time, automatic notification of death.

The proposed addition of "death in custody" status change would allow families to *voluntarily enroll* in their state's respective VINE program only if they desire such notification. The voluntary nature of this program would ensure that a family would only be contracted by choice about a death through any of the more informal methods used by VINE, such as emails or text messages.¹⁹⁵ Accordingly, this portion of the proposal would grant inmates' families *the opportunity to exercise their right to death notification*.

192. See *supra* Section II (C).

193. See *supra* text accompanying notes 80–95.

194. See *Register for Notifications*, *supra* note 80, at 01:01.

195. See Appriss, *Quick Reference*, *supra* note 81.

Further, this is a feasible notification method because VINE functions nationwide in over two-thirds of the country.¹⁹⁶ Incorporating death notification into VINE would be a simple addition to the preexisting framework. In fact, other states already incorporate death status-changes into their own VINE victim notification procedures. The California State VINE allows “victims, next of kin, and witnesses” to request registration for notification of “release, death or escape.”¹⁹⁷ Yet, California’s policy is not flawless because it requires any notification request to be reviewed by California Department of Corrections and Rehabilitation staff.¹⁹⁸ In the event of an abuse of power, California’s policy enables prison staff to avoid reporting through VINE by denying a next-of-kin request for notification.

Arkansas’s VINE notification system also specifically addresses death notification.¹⁹⁹ More generous than the California provision, Arkansas’s system provides that “[N]otification calls to registered persons *will be made*” when a triggering event, such as a death, occurs.²⁰⁰ In the event of a death, Arkansas uses a “non-emergency” alert plan to call families.²⁰¹ The Arkansas system places “non-emergency” calls every thirty minutes between 7:00 am and 10:00 pm to the VINE registrant.²⁰² These calls continue until the recipient enters their designated PIN and confirms the call.²⁰³ The Arkansas system can leave notification messages on voicemail, though calls are to continue every two hours after that, again between 7:00 am and 10:00 pm.²⁰⁴

In a final illustrative example, the Minnesota VINE policy also offers a “non-emergency delay” plan for notification in the event of an in-custody death.²⁰⁵ Further, Minnesota details that

196. *Register for Notifications*, *supra* note 80, at 01:34.

197. Appriss, Inc., *CA State Vine*, VINELINK, <https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=5000> (last visited Jan. 21, 2016).

198. *Id.*

199. *Arkansas Statewide VINE*, ARK. DEP’T CORR. 2, http://adc.arkansas.gov/visitors/Documents/vine_facts.pdf (last visited Jan. 21, 2016).

200. *Id.* (emphasis added).

201. *Id.* at 3.

202. *Id.* at 2.

203. *Id.*

204. *Id.*

205. *Minnesota VINE Fact Sheet*, MINN. DEP’T PUB. SAFETY 2 (June 2013) <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/Minnesota%20VINE%20Fact%20Sheet.pdf>. In Minnesota, “non-emergency” notification calls are placed

in cases of death notification through email and text message must be delayed twelve hours “from the time the record is received to allow for family notification.”²⁰⁶

By adding death notification to its VINE system, Louisiana would align itself with other states across the country that provide this service. Current LAVNS policies offer notification to registrants only in the event of offender release, transfer, escape from a parish facility, or change in case status. Thus, there is a large disconnect between LAVNS policies and those in California, Arkansas, and Minnesota. The addition of a “death” status-change across all states’ victim notification platforms would close that gap. In Louisiana, LAVNS could adopt the “death of inmate” status-change to give families the option of registering for state VINELink death notification *in addition to or as an alternative for* the following change suggested for the Louisiana Revised Statutes.

B. LOUISIANA SPECIFICS: LA REVISED STATUTES AND CLASSES FOR NEXT-OF-KIN NOTIFICATION

Louisiana should adopt a separate provision in Title 15 of the Revised Statutes requiring notification of next-of-kin in the event of an in-custody death.²⁰⁷ This provision should designate the “next-of-kin” entitled to notification according to the hierarchical classes of survivors designated by Louisiana Civil Code Article 2315.2. Accordingly, next-of-kin would include:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either

between 7:00 am and 9:00 p.m. for every half hour over the course of forty-eight hours. *Id.* If a call is answered but not confirmed, calls occur every two hours thereafter. *Id.* Calling does not cease until the correct PIN is entered or forty-eight hours have elapsed since calls began. *Id.*

206. *Minnesota VINE Fact Sheet*, *supra* note 205, at 2. Minnesota also provides notification to victims and “others who have been impacted by crime” through a separate service, “Minnesota Choice.” *Minnesota Choice*, MINN. DEP’T CORR., <http://www.doc.state.mn.us/PAGES/index.php/victims> (last visited Jan. 21, 2016).

207. This legislative change would require a majority vote in the legislature and the governor’s signature. *See How a Bill Becomes a Law*, LA. ST. LEGIS., <https://www.legis.la.gov/legis/LegisInfo.aspx?opt=2> (last visited Jan. 21, 2016). While such a process is ideal, it is admittedly challenging. A similar result could be accomplished through regulations. Rather than directly adding a provision to the Revised Statutes, another legislative solution would be for the legislature to authorize the Department of Corrections to promulgate regulations to implement the death notification procedures described.

of them if he left no spouse or child surviving.

(3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.

(4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.²⁰⁸

The Louisiana Revised Statute should model notification procedures after the Federal Bureau of Prison standards set forth in Section III of this Comment. Specifically, the Revised Statute should require the state prison warden (or designee) to telephone the next-of-kin to communicate circumstances surrounding in-custody deaths.²⁰⁹ Further, Louisiana should require the warden to contact deceased inmate's families with letters of condolence following the in-custody death.²¹⁰ While the Federal Bureau of Prison procedure instructs that next-of-kin are those designated on an Acknowledgement of Inmate form,²¹¹ the Louisiana framework would designate the previously mentioned classes as next-of-kin for notification purposes. Ideally, the warden would receive some sort of training in basic notification procedures. The education program could be influenced by military training procedures for Casualty Notification officers.²¹²

The in person, in time, in pairs, in plain language, and with

208. See LA. CIV. CODE ANN. art. 2315.2(A) (2010); see also *supra* Section II (A) (2). The remainder of Code Article 2315.2 could also be adopted when defining the extent of classes to receive death notification:

B. The right of action granted by this Article prescribes one year from the death of the deceased.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

D. As used in this Article, the words "child", "brother", "sister", "father", "mother", "grandfather", and "grandmother" include a child, brother, sister, father, mother, grandfather, and grandmother by adoption, respectively.

E. For purposes of this Article, a father or mother who has abandoned the deceased during his minority is deemed not to have survived him.

LA. CIV. CODE ANN. art. 2315.2(B)–(E) (2010).

209. To avoid undue burden on the warden to find these family members, state prisons should implement an Emergency Contact Form similar in nature to the Idaho Emergency Contact Information Form. See *supra* notes 152–59 and accompanying text.

210. See DEATHS NOTIFICATIONS, *supra* note 112, at 8; see also *supra* Section III (A).

211. *Id.* at 7.

212. See MOLDOVAN, *supra* note 138, at 13–14; *A Grim Task*, *supra* note 181.

compassion²¹³ principles behind Iowa's notification guidelines outline the ideal policy for notification. Nevertheless, implementation of the FBP's phone call and subsequent letter of condolence could act as a first step in improving death notification in Louisiana. This solution seems more feasible in the sense that time and costs would be reasonable.

A change in the Revised Statutes to model the FBP notification procedure would ensure the dignity of prisoners in and after death, in accordance with case law, the Constitution, and basic human rights. Louisiana should take action to implement these death notification measures to avoid harms as suffered by the Lee and Washington families.

V. CONCLUSION

While inmates are incarcerated their human dignity must be preserved under the Eighth and Fourteenth Amendments. Part of preserving an inmate's dignity is ensuring that dignity is maintained through death. Basic human rights should be upheld not only in the way inmates meet their death, but also in the way their death is made known to their loved ones. A respect for human life in the process of death notification can be upheld in the state prison system. Through implementing one of the proposed solutions, either a change in VINELink status notifications to encompass death notification or implementation of a legislative or regulatory solution in Louisiana, respect for life, even at its end can be preserved. All it would take to avoid miscommunications about deaths to next-of-kin is a call to a deceased inmate's family. The question that remains is whether our state prison system will answer its call to uphold inmate dignity by notifying inmates' next-of-kin.

Ashley E. Arnold

213. IN PERSON, IN TIME, *supra* note 135, at 2–4.