Chapter 11

Liability and Wrongful In-Custody Deaths

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Sudden deaths in police or correctional custody after a use-of-force confrontation are emerging as a critical area in civil litigation. This chapter describes the potential civil liability issues commonly associated with wrongful custodial deaths involving deaths following restraint incidents. Liability issues involving standards of care in state courts are examined, as well as the standards for use of force, restraints, and medical care in accordance with actions stemming from claims of negligence and Section 1983. Although many of these lawsuits are settled out of court, those cases that are decided in court yield a number of essential legal issues worthy of concern for police officers and administrators. Custodial deaths normally will produce a civil lawsuit by the estate attempting to demonstrate that the officers and governmental entity should be held responsible for a wrongful death.

Plaintiff Assertions of Wrongful Custodial Deaths

A lawsuit filed in a wrongful custodial death will allege that the agency as a whole was intentionally negligent, grossly negligent, and deliberately indifferent to the needs of the deceased. The lawsuit generally will assert that the department’s custom, policy, and procedures (or lack thereof) were the “proximate cause” of the death.

The claim may also assert that the department fails to keep abreast of changes in the profession, and that it takes a death or a lawsuit before the agency makes necessary changes. Generally, the following allegations are made
against public officials in a sudden wrongful death (not mutually exclusive): excessive force used by the arresting officers, officers assaulted and battered the deceased, the officers’ use of restraints or force methods contributed to the decedent’s death, the officers were grossly negligent or deliberately indifferent to the medical and/or psychological needs of the deceased, officers failed to assess/monitor the medical condition or to provide/summon medical assistance for the deceased, officers failed to transport the deceased to the nearest hospital or summon medical assistance at the arrest scene, the officers failed to follow departmental policy, the decedent in a maximum restrained position was transported in a police vehicle, which contributed to his or her death, officers violated the decedent’s constitutional rights, officers acted outside the scope of their authority, and officers conspired to injure or cause the death of the deceased.

The claim may also assert that administrative personnel failed to provide officers with policies that would direct them in responding to “special needs” arrestees (drug-induced or mentally impaired), failed to provide officers with training in how to properly respond and use force-control techniques with special needs arrestees, failed to provide officers with appropriate equipment to perform their duties, failed to supervise their officers, failed to train supervisors, negligently entrusted equipment to their officers without training or competency evaluation, condoned excessive force measures with arrestees, failed to articulate directives in how to transport special needs arrestees, failed to develop protocols for responding to violent arrestee’s medical/psychological needs, conspired to cause the death of the deceased, failed to conduct an internal or independent investigation of the death, and covered up the death with a less than adequate investigation. Each case will obviously comprise numerous variables for the plaintiff to attack. In any lawsuit, not all initial allegations will withstand judicial scrutiny. The agency should, however, be prepared to justify and defend each claim.

**Negligence Components**

The common law and statutes generally provide that the police may take custody of the apparently mentally ill or those who appear to be dangerous (1). Negligence claims against police officers for wrongful deaths of arrestees are based on state tort law. Negligence tort definitions differ from state to state, and are generally differentiated from other torts as it includes inadvertent behavior that results in injury or damage (2). In some states, slight negligence will suffice, whereas other states require gross negligence, which involves a reckless disregard of the consequences of behaviors. When an arrestee dies in police