CUSTODIAL SUICIDE: EVOLVING LIABILITY CONSIDERATIONS
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INTRODUCTION

An intoxicated woman is taken into protective custody. During booking, she slips in and out of consciousness. She is placed in a cell, unsupervised and hangs herself with her shirt-sleeve. Could the suicide have been prevented? Was the custodian under a duty to prevent it? Should he be held liable for a suicide which occurs in his custody?

It is necessary to put these questions into context. Custodial suicide is statistically significant. It is the leading cause of death among detainees housed in jails. Approximately four times as many suicides occur in lock-ups and jails as in prisons. It has been projected that the suicide rate in detention facilities is approximately nine times greater than that of the general population. Other studies indicate that the rate is as much as sixteen times greater than that of the general population. Inmate populations may be predisposed to suicide. The federally funded Jail Suicide Prevention task force cites pre-disposing factors which include recent intoxication or use of drugs; recent loss of stabilizing resources; current mental illness and poor physical health. Further, the inmate's perspective of the jail may enhance the likelihood of suicide. To him a jail may seem an unknown, dehumanizing, authoritarian environment, in which he has no apparent control over his future and feels shame and the isolation from family. This point was underscored in a report to the Massachusetts Legislature by the Special Commission to Investigate Suicide in Municipal Detention Centers: "The experience of being locked up may

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precipitate a temporary crisis, which can be averted by removing its causes as far as possible. This kind of crisis is very different from a serious and lasting mental illness. Since a jail is a controlled environment, it is possible, at least in theory, to prevent every suicide in it.”

In recent years, there has been a dramatic shift in the willingness of state and federal courts to find custodians liable for failure to prevent suicide. This fact is evidenced by an increasing judicial trend to overturn lower court dismissals of custodial suicide litigation, thereby sending the cases back to trial and increasing the likelihood of settlement. Since 1980, this trend has been made apparent in cases originating in Florida, Massachusetts, Kentucky, Alaska, Illinois, Texas and Pennsylvania. In many instances litigation is bolstered by the presence of statutes, regulations or advisory standards proscribing actions which custodians should or should not have taken.

Clearly, custodians have legal duties to care for and protect those they incarcerate. Care and protection are relative terms. They should be considered with regard to the diverse nature of the populations who are incarcerated and the facilities in which they are housed. The incarcerated are comprised of the pre-arraigned, pre-trial detainees, convicted felons and misdemeanants, sex offenders, mentally ill, medically infirm, mentally retarded, forensic evaluatees, and others. They are housed in settings which are diverse in mission and in availability of resources, including lock-ups, jails, house of corrections, half-way houses, pre-release centers, acute correctional mental health units, prisons, prison hospitals and forensic mental health hospitals.

Our analysis of custodial suicide will be guided by the nature of the custodial setting in which it occurs and by considerations of public policy. We will focus upon the state of the law—the duties it imposes, the liability it attaches. The discussion will be in two parts. The first relates to the legal process. It will introduce the reader to the wrongful death action and the civil rights (§ 1983) action. Standards of liability will be identified for each. Reference will be made to the type and amount of damages that are common, the incidence of settlement and considerations regarding indemnification and immunity. The second part will focus upon the evolution of standards of care. It will discuss the legal duties to detect suicide risk and to protect against its occurrence. Emphasis will be placed upon environmental considerations as well as pre-dispositional factors, such as intoxication, or previous suicide attempts. We will review the custodial facility’s capacity to respond to the