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Existential Blue: Police and Municipal Duty, Liability, and Recommendations for Suicide Prevention

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In the United States, over 48,000 people died by suicide in 2021.[i] In Illinois, 1,454 people died from suicide in the same year.[ii] Local police forces, by necessity and by choice, have a role to play in suicide prevention.[iii] Around seven to ten percent of police interactions with citizens involve a citizen with a mental health condition.[iv] These interactions can escalate quickly, and officers are "1.4 to 4.5 time more likely to use force during [these] encounters" compared to encounters with people who do not have mental health conditions.[v] Given the nature and frequency of these interactions, it is important for municipalities to understand the potential liability these interactions can create.

This article addresses federal and state law regarding suicide prevention, including both any duty that exists for police to intervene and actions that have the potential to incur civil rights liability for police departments. This article also considers the duty to intervene from a negligence framework to determine if there may be tort liability following intervention or non-intervention and concludes with a brief review of best practices.

Before discussing potential liability for these encounters, it is worthwhile to detail several examples of law enforcement officers encountering individuals in a mental health crisis in several different ways – whether it be while responding to calls, during interviews, or while a person is being held in police custody.

- In *Hayes v. City of Des Plaines*, an individual died from suicide while being held in an interview room at the police station. 182 F.R.D. 546, 548 (1998). During the interview, the individual mentioned that he had "experienced suicidal thoughts in the past and that a doctor was treating him for his condition." *Id*. After processing the individual, the individual was left in the interview room

alone for about an hour and was found to have taken his own life. *Id*. His former spouse sued the City of Des Plaines and all of the officers involved on five counts including civil rights violations under 42 U.S.C. § 1983, negligence, willful and wanton conduct, and wrongful death. *Id.*

- In *Miller v. Harbaugh*, a child died by suicide while detained at a youth detention facility. 698 F.3d 956, 958 (7th Cir. 2012). When the individual first arrived at the Illinois Youth Center St. Charles, the individual was referred for an assessment which indicated that the individual had a history of hospitalizations related to mental health and several suicide attempts. *Id*. Initially, the individual was assigned to the Special Treatment Unit that is reserved for residents with "acute mental health disorders and moderate to high suicide risk." *Id*. In August of 2009, the individual was assessed by a psychologist who took the individual off his meds and determined he was no longer suicidal. *Id.* The individual died by suicide several days later. *Id*. The individual's mother sued several of the departments involved in her child's detention and several officials individually under 42 U.S.C. § 1983. *Id*. at 960.
- In California, Fremont police were called to the home of a man in crisis. *Adams v. City of Fremont*, 80 Cal. Rptr. 2d 196, 248 (Cal. App. 1st Dist. 1998). The police engaged the resident in conversation, trying to negotiate his exit from the home without a weapon, during which he was not in custody. *Id*. at 253, 285. The man died from suicide, from a self-inflicted gunshot wound in addition to officers firing at him in response to the first shot fired. *Id.* at 262 n.16.

These examples detail the variety of experiences law enforcement officers face when engaging with suicidal individuals. Because of the variety of experience, there is no one-size-fits-all approach to suicide prevention and, for this article, definitive answers on duty, liability, and constitutional violations are elusive. Additionally, because the Illinois legislature has not provided significant guidance on any right to suicide or the role of municipalities in suicide prevention, cities have broad discretion on how they will engage with suicidal individuals.

Rather than providing exact answers regarding when police or municipalities may incur liability and step-by-step instructions on liability avoidance, this article explores foundational questions worthy of further research on constitutional provisions impacting police interaction with

suicidal individuals, duty to intervene, liability, and best practices to consider. This article concludes with recommendations on the role of law enforcement and municipalities broadly on suicide prevention, as well as a brief overview of best practices being implemented inside and outside of Illinois.

Guiding questions include:

1. What constitutional provisions, if any, guide how police should interact with suicidal individuals?
2. What duty do police officers have to respond to situations in which a person is suicidal?
3. What liability do individual officers, police departments, and municipalities face from responses to a person who is suicidal?
4. What are best practices for local police departments to implement?
5. What role should law enforcement officers play versus other first responders?

Constitutional, Federal Statutory, and State Law Implications for Police Interactions with Suicide Individuals

Police Power Reserved to the State in the Tenth Amendment

The US Constitution does not directly address the role of police when interacting with suicidal individuals. The Constitution's preamble mentions ensuring domestic tranquility, providing for the common defense, and promotion of general welfare. U.S. Const. pmbl. The Tenth Amendment, the last included in the Bill of Rights, reserves to the states "sovereignty, freedom, and independence, and every power, jurisdiction, and right" not delegated by the constitution to the federal government. U.S. Const. amend. X. This reservation holds the police power (including literal policing) in the states.

No Constitutional Right to Suicide

The United States Constitution does not provide a right to physician-assisted suicide. *Washington v. Glucksberg*, 521 U.S. 702 (1997). Additionally, the Supreme Court has found that refusing medical treatment differs from affirmative action to end the life of a patient, allowing for refusal of care. *Vacco v. Quill*, 521 U.S. 793 (1997). This distinction in medical care provides a

helpful overlay for police action, whereby analogy police might refuse to engage in suicide prevention but cannot intentionally aid in ending a individual's life. Police engagement in suicide is most common in so-called "suicide by cop" scenarios where individuals engage in dangerous behavior to goad police into killing them.

Illinois State Law Does Not Provide a Right to Suicide

Illinois does not as a state provide a right to suicide. Illinois statutes address inducement to suicide, criminalizing it. 720 ILCS 5/12-34.5. There are efforts, the success of which is yet to be seen, to legalize physician-assisted suicide.[vi]

While individuals lack a right to suicide, there may not be a duty for police officers to intervene (discussed below). Whether or not a duty exists, police officer intervention raises potential constitutional violations separate from any right or lack thereof to suicide.

Potential Constitutional Violations

Law enforcement officers, in their role acting on behalf of the state, might violate the First, Fourth, Fifth, or Fourteenth Amendment rights of individuals. A suicidal individual might reveal incriminating information, raising Fifth Amendment concerns. An individual might express suicidal thoughts, and then be involuntarily committed for their speech which could lead to First Amendment implications. If a state through its officials, including law enforcement officials, deprives individuals of their constitutional rights, those individuals, their families, or their estates may pursue a claim under 42 U.S.C. § 1983.

When first responders encounter an individual who is suicidal, they may try to intervene. This intervention might amount to a Fourth Amendment seizure. The Fourth Amendment protects individuals from unreasonable seizures. U.S. Const. amend. IV. If the responders physically restrain the individual or make a show of authority to which the suicidal individual submits, then a Fourth Amendment seizure occurred. *California v. Hodari D*, 499 U.S. 621 (1991).

However, the Seventh Circuit Court of Appeals has held that when officers handcuffed an individual and transported him to a mental health facility without the individual's consent, there was no constitutional violation. *Mucha v. Jackson*, 786 F.3d 1064 (7th Cir. 2015). The individual had discussed thoughts of suicide by cop. *Id*. The court noted that "a police officer is not liable for damages caused by his official acts unless the unlawfulness of the acts is clearly established in law." *Id*. The court has stated this repeatedly, noting "police officers are entitled to qualified immunity for action taken during a stop or arrest insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Rice v. Burks*, 999 F.2d 1172, 1174 (7th Cir.1993) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); Smith v. City of Chicago, 242 F.3d 737 (7th Cir. 2001).

The Supreme Court in *Graham v. Connor* held "[d]etermining whether the force used to affect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396 (1989). The case suggests police interaction with suicidal individuals should be analyzed under a Fourth Amendment seizure framework when considering civil action for deprivation of rights claims. *Id*.; 42 U.S.C. § 1983.

Duty Owed to Individuals s by Law Enforcement Officials

There is likely no legal duty for police officers to prevent suicide when individuals are not in custody. However, if an individual is in custody, the police department may have a duty to prevent suicide.

The Supreme Court has held that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago Cnty. Dept. of Soc. Services*, 489 U.S. 189, 195 (1989); *Hayes v.*

City of Chicago, 230 Ill. App. 3d 603, 609 (1st Dis. 1992). The Seventh Circuit has determined that suicide is a "private violence." *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 987 (7th Cir. 1998). Since suicide is a private violence, the Supreme Court's *DeShaney* decision holds that the state through law enforcement officials does not have a duty to protect citizens from suicide. For an extended discussion providing persuasive authority, see *Adams v. City of Fremont*, 80 Cal. Rptr. 2d 196 (Cal. App. 1st Dist. 1998) (holding police did not have a duty to prevent suicide by a resident in their home).

When a person is taken into the custody of the State through the police department, the Constitution imposes a "duty to assume some responsibility for his safety and general well-being." *DeShaney*, 489 U.S. at 200; *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982). This duty arises from the limitations the State imposed on the individual's freedom to act on their own behalf and is grounded in the Due Process Clause and the Eighth Amendment. *DeShaney*, 489 U.S. at 200. Case law suggests that when an individual is being held in State custody, the State is obligated to provide adequate, food, shelter, clothing, and medical care to maintain the individual's safety. *DeShaney*, 489 U.S. at 200; *Youngberg*, 457 U.S. at 317.

Liability for Interactions with Suicidal Individuals and the Tort Immunity Act

The Local Governmental and Governmental Employees Tort Immunity Act establishes protection to local governments and their employees for acts or omissions taken during the performance of their official duties. 745 ILCS 10 (West 2023). The recent Illinois Third District Appellate Court decision in *Andrade v. City of Kankakee* details the difference between absolute and qualified immunity in the Tort Immunity Act. *Andrade v. City of Kankakee*, 2023 IL App (3d) 230035; 745 ILCS 10 (West 2023). Absolute immunity detailed in Section 4-102 "absolutely immunizes local public entities and their employees for both negligent and willful and wanton conduct in failing to protect or in providing inadequate police protection services." *Andrade*, 2023

IL App (3d) 230035, ¶ 16. Qualified immunity is detailed in Section 2-202 of the Act and provides immunity for public employees that are engaged in the execution or enforcement of a law unless a special duty existed, or the action was willful and wanton. 745 ILCS 10/2-202; *Andrade*, 2023 IL App (3d) 230035, ¶23. Either immunity could be implicated in an interaction between a law enforcement officer and a suicidal individual, but absolute immunity will provide the most protection from liability.

Absolute immunity will apply when the basis of the plaintiff's claim is that the police failed to provide protection or failed to provide adequate protection. *Id.* Police protection includes efforts to aid, assist, or rescue individuals. *Payne v. City of Chicago*, 2014 IL App (1st) 123010. There are no exceptions under Section 4-102 for willful and wanton conduct or special duty. *Andrade*, 2023 IL App (3d) 230035, ¶ 16. Section 4-102 is broad in scope and "has been applied in a wide range of circumstances," so it is likely that in an interaction between a law enforcement officer and a suicidal individual, absolute immunity will apply. *Id.* at ¶ 17.

If absolute immunity will not apply, qualified immunity may. Qualified immunity is detailed in Section 2-202 of the Act which states that "a public employee is not liable for [their] act or omission in the executions of any law unless such act or omission constitutes willful and wanton conduct." 745 ILCS 10/2-202. In order to make out the affirmative defense of qualified immunity under the Act, it must be proven that the officials were executing or enforcing a law during the interaction. *Andrade*, 2023 IL App (3d) 230035. It will be beneficial to point to the specific law that was being enforced. *Id*. at ¶31. The determination of whether a public employee is enforcing a law under the Tort Immunity Act is a question of fact that must be determined by the trier of fact unless the facts alleged support only one conclusion. *Id.* If an officer is effecting an arrest, they are executing or enforcing a law for purposes of the Tort Immunity Act. *Glover v. City of Chicago*, 106 Ill. App. 3d 1066, 1074 (1982). However, an officer is not executing and

enforcing the law every time that he or she responds to a dispatched call. *Brown v. City of Chicago*, 2019 IL App (1st) 181594, ¶50.

If a law enforcement officer is assisting or protecting a suicidal individual, then absolute immunity will apply under Section 4-102. If a law enforcement officer is effecting an arrest or enforcing a specific law, then qualified immunity will apply under Section 2-202 if the action was not willful and wanton. Given the nature of interactions between law enforcement officers and suicidal individuals, it is likely the municipalities and individual officers will have immunity from liability for any state claims.

Recommendations for Municipalities and Police Forces to Better Serve the Mental Health Needs of Their Communities

This section provides a review of practices and recommendations in Illinois and across the country where municipalities interact with individuals, especially those in the midst of a mental health crisis. These include crisis intervention teams and co-response programs as well as documents addressing suicide and mental health from Illinois state departments and the White House. Local governments and states utilize various methods to address mental health and police, and those methods deserve more exploration.

The Illinois Law Enforcement Training and Standards Board (ILETSB) provides state-certified Crisis Intervention Team (CIT) training to law enforcement officers throughout the state of Illinois. The ILETSB is the state agency in charge of maintaining professional standards among law enforcement officials.[vii] The ILETSB is required to develop a standard curriculum for certified training programs for crisis intervention and police response to individuals with mental health conditions. 50 ILCS 705/10.17.

CIT training is generally forty hours of coursework on "recognizing mental health conditions, de-escalation in crisis situations, and procedures for utilizing mental health treatment services in the local community."[viii] ILETSB also has shorter trainings that can be used as

refreshers on the CIT training or specialized CIT training. Municipalities and police departments should consider sending all law enforcement officials to CIT training in order to improve interactions with individuals struggling with mental health issues.

Some Illinois municipalities are implementing co-response programs where police are joined by a licensed mental health professional, usually a social worker, on mental health calls.[ix] Co-response programs provide positive outcomes including "increased access to community-based mental health treatment and reduce the burden on police officers."[x] Engaging suicidal individuals in a manner that de-escalates the situation is important to prevent suicide and ensure officer safety. An additional alternative is the "mental health-based response" where non-sworn mental health providers are utilized instead of police officers. This alternative has resolved incidents, but it has also led to a higher arrest rate at the conclusion of the interaction.[xi]

Duty or not, recent actions of the federal government show there is an effort for governments to prevent suicide. The White House indicated initiatives to address mental health issues and prevent suicide.[xii] At the state level, Illinois is tackling suicide prevention, releasing among other documents a 2020 Strategic report on suicide prevention and a toolkit for school administrators.[xiii] Illinois cities vary in their data collection, reporting, and prevention efforts.[xiv] While reporting and some resource lists exist, few cities appear to address suicide using the full force of municipal resources. First responders, public health departments, human services divisions, and related agencies should organize and address suicide prevention holistically, taking cue from state planning efforts. Multi-agency units should discuss resources that exist, best practices (including exploration of crisis intervention teams) to implement, and gaps that should be filled. Considering broad protections police officers possess from liability for efforts related to intervention, cities should consider more directly engaging in suicide prevention, including in crises, while ensuring to the best of their ability first-responder safety.

Officers and cities have a responsibility, if not a legal duty, to prevent suicide. Whether protected from liability because a duty does not exist or because of absolute or qualified immunity, tort and constitutional claims will be difficult if not impossible to make out. Even with little to no legal obligation, cities, states, and the federal government are still looking for ways to address suicide. This article is only a beginning on determining legal implications for efforts to prevent suicide, an area of municipal law worthy of further research.

This article explored foundational questions including constitutional provisions impacting police interaction with suicidal individuals, the duty to intervene, liability, and best practices for police departments and municipalities. The goal of this article is to encourage local government leaders to consider the ways their community can best address suicidal members of their community, and these questions deserve further research and consideration by public policy leaders.

[i] *Facts About Suicide*, Centers for Disease Control and Prevention (Dec. 30, 2023), https://www.cdc.gov/suicide/facts/index.html

[ii] *Suicide Mortality by State*, Centers for Disease Control and Prevention (Dec. 30, 2023), https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm

[iii] Linda A. Teplin, *Keeping the Peace: Police Discretion and Mentally Ill Persons*, (Dec. 30, 2023), https://www.ojp.gov/pdffiles1/jr000244c.pdf

[iv] Deane, M. W., Steadman, H. J., Borum, R., Veysey, B. M., & Morrissey, J. P. (1999). Emerging partnerships between mental health and law enforcement. *Psychiatric Services*, 50(1), 99-101.; Janik, J. (1992); Dealing with mentally ill offenders. *FBI Law Enforcement Bulletin*, 61, 22; https://icjia.illinois.gov/researchhub/articles/responding-to-individuals-experiencing-mental-health-crises-police-involved-programs

[v] Alysson Gatens, *Responding to Individuals Experiencing Mental Health Crises: Police-Involved Programs*, Illinois Criminal Justice Information Authority (April 2, 2018) https://icjia.illinois.gov/researchhub/articles/responding-to-individuals-experiencing-mental-health-crises-police-involved-programs; Note: A range is provided due to the authors' use of two distinct data sets: the Project on Policing Neighborhoods (1.4 times as likely) and the Police Services Study (4.5 times as likely). Engel, R. S., & Silver, E. (2001). Policing mentally disordered suspects: A reexamination of the criminalization hypothesis. *Criminology*, 39(2), 225-252.

[vi] Chris Haring, *Illinois Advocates Propose Spring 2024 Aid-In-Dying Bill*, Death with Dignity (Nov. 3, 2023), https://deathwithdignity.org/news/2023/11/illinois-advocates-propose-maid/

[vii] *Agency Information*, Illinois Law Enforcement Training and Standards Board (Dec. 30, 2023) https://www.ptb.illinois.gov/about/agency-information/#:~:text=ILETSB%20%2D%20Agency%20Information&text=The%20Illinois%20Law%20Enforcement%20Training,law%20enforcement%20and%20correctional%20officers.

[viii] Deane, M. W., Steadman, H. J., Borum, R., Veysey, B. M., & Morrissey, J. P. (1999). Emerging partnerships between mental health and law enforcement. *Psychiatric Services*, 50(1), 99-101.; Janik, J. (1992); Dealing with mentally ill offenders. *FBI Law Enforcement Bulletin*, 61, 22; https://icjia.illinois.gov/researchhub/articles/responding-to-individuals-experiencing-mental-health-crises-police-involved-programs

[ix] Chuck Goudie, et al., *Illinois police departments reimagine how they respond to 911 calls for mental health crises*, ABC 7 News (Aug. 30, 2022), https://abc7chicago.com/chicago-police-department-aurora-911-call-mental-health-crisis/12181963/

[x] Shapiro, G. K., Cusi, A., Kirst, M., O'Campo, P., Nakhost, A., & Stergiopoulos, V. (2015). Co-responding police-mental health programs: a review. *Administration and Policy in Mental Health and Mental Health Services Research*, 42(5), 606-620

[xi] *Id*.

[xii] *FACT SHEET: Biden-Harris Administration Actions to Prevent Suicide*, The White House (Sep. 30, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/30/fact-sheet-biden-harris-administration-actions-to-prevent-suicide/

[xiii] *Illinois Suicide Prevention Strategic Plan*, Illinois Department of Public Health (Dec. 30, 2023),https://dph.illinois.gov/content/dam/soi/en/web/idph/files/publications/illinoisstrategicplan2020reduced.pdf; *Illinois Youth Suicide Prevention Toolkit*, Illinois State Board of Education (Dec. 30, 2023), https://www.isbe.net/Documents/Suicide-Prevention-Procedures.pdf

[xiv] *Mental Health Report: Trends in Suicide-Related Events, Chicago, 2016-2020*, Chicago Department of Public Health (Nov. 5, 2020), https://www.chicago.gov/content/dam/city/depts/cdph/chron_dis/general/Office_Violence_Prevention/Suicide%20Trends_HAN_MentalHealthReportNov2020%20(1).pdf; https://champaignil.gov/cuhelp/