COMMENT

Mental Health Care Policies in Jail Systems: Suicide and the Eighth Amendment

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INTRODUCTION

Suicide is the leading cause of death in jails nationwide.[1] The jailhouse suicide rate is nine times greater than that of the general civilian population.[2] In addition, between 6.5% and 10% of inmates in correctional facilities in general suffer from serious mental illness.[3] Another 15% to 40% suffer from a moderate mental illness.[4] Studies also indicate a high incidence of suicide among mentally ill jail inmates.[5] These statistics suggest that jail suicide prevention and mental health policies are woefully inadequate.[6]

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[1] Lindsay M. Hayes, *From Chaos to Calm: One Jail System's Struggle with Suicide Prevention*, 15 BEHAV. SCI. & L. 399, 400 (1997) (citing Bureau of Justice Statistics, *Jails and Jail Inmates 1993-1994*, Washington, D.C.: U.S. Dep't of Justice (1995)). Prisons and jails serve different functions. *See* James R. P. Ogloff et al., *Mental Health Services in Jails and Prisons: Legal, Clinical, and Policy Issues*, 18 LAW & PSYCHOL. REV. 109, 109-10 (1994). Jails serve as the point of entry to the criminal justice system and typically house three different types of inmates: 1) those awaiting arraignment; 2) those who were denied bail and are being held until trial; and 3) those who received short sentences, usually less than one year. *Id.* Prisons, on the other hand, usually house inmates after they are convicted and sentenced to serve more than one year. *Id.* Jails and prisons are also funded and administered differently. *Id.* In addition, individual municipalities administer jails, whereas state and federal governments administer the prison system. *Id.*

[2] Hayes, *supra* note 1, at 400 (citing Lindsay M. Hayes & Joseph R. Rowan, *National Study of Jail Suicides: Seven Years Later*, 60 PSYCHIATRIC Q. 7, 7-29 (1989)).

[3] Ogloff, *supra* note 1, at 109; *see* Fred Cohen, *Captives' Legal Right to Mental Health Care*, 17 L. & PSYCHIATRY REV. 1, 39 (1993) [hereinafter Cohen, *Captives*] (citing de-institutionalization of mentally ill as contributing factor to unprecedented growth of mentally ill inmates in jails and prisons); *see also*, Newman v. Alabama, 349 F. Supp. 278, 284 (1972) (finding that approximately 10% of inmates in Alabama prison system are psychotic and another 60% are disturbed enough to require treatment).

[4] Ogloff, *supra* note 1, at 109.

[5] *See* CHARLES LLOYD, SUICIDE AND SELF-INJURY IN PRISON: A LITERATURE REVIEW 20-24 (1990). In response to the need for further research into the causes of prison suicide, Lloyd surveys the suicide studies that researchers have conducted in the United States and the United Kingdom. *Id.* at 3-24. Lloyd finds a striking consistency in the rates of mentally ill inmates who commit suicide, especially among those inmates who were psychiatric in-patients prior to incarceration. *Id.* at 20-21. Most studies agree that approximately one-third of all inmates who commit suicide have a record of previous psychiatric treatment. *Id.* Another considerable portion of inmates who commit suicide also had some sort of contact with the psychiatric community. *Id.*

[6] *See id.* at 22.

When a mentally ill inmate commits suicide, his estate often relies on the Eighth Amendment to bring a federal suit against the jail's governing municipality.[7] The Eighth Amendment prohibits the use of cruel and unusual punishment against inmates.[8] The U.S. Supreme Court has held that cruel and unusual punishment includes denying care to an inmate with serious medical needs.[9] Courts have subsequently held that a "serious medical need" can include mental illness.[10]

Plaintiffs who bring suit against a municipality for violating a mentally ill inmate's Eighth Amendment rights rely on title 42, section 1983 of the U.S. Code ("section 1983"). Section 1983 is the general provision that allows individuals to sue government entities for constitutional violations.[11] To bring a successful section 1983 claim against a municipal jail, plaintiffs must prove that the municipality

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[7] *See, e.g.*, Colburn v. Upper Darby Township, 946 F.2d 1017 (3d Cir. 1991) [hereinafter *Colburn II*]; Cleveland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989); Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987); Partridge v. Two Unknown Police Officers, 791 F.2d 1182 (5th Cir. 1986); Bee v. Greaves, 744 F.2d 1387 (10th Cir. 1984); Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979); Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977); Newman v. Alabama, 503 F.2d 1320 (5th Cir. 1974); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980). Alternately, the decedent's estate may bring a wrongful death claim in state court. Fred Cohen, *Custodial Suicide: Legal Foundation for Liability*, 34 CRIM. L. BULL. 32, 33 (1998) [hereinafter Cohen, *Custodial Suicide*] (citing William D. O'Leary, *Custodial Suicide: Evolving Liability Considerations*, 60 PSYCHIATRIC Q. 31, 34-36 (1989)). However, many states place a monetary limit on recovery. *Id.*; *see, e.g.*, Estate of Cole v. Fromm, 94 F.3d 254 (7th Cir. 1996); Simmons v. City of Philadelphia, 947 F.2d 1042 (3d Cir. 1991); Freedman v. City of Allentown, 853 F.2d 1111 (3d Cir. 1988); Colburn v. Upper Darby Township, 838 F.2d 663 (3d Cir. 1988) [hereinafter *Colburn I*].

[8] U.S. CONST. amend. VIII. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." *Id.* The Eighth Amendment applies only to convicted criminals, whether they are housed in prisons or jails. *See* City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983); Monmouth County Corr. Inst'l Inmates v. Lanzaro, 834 F.2d 326, 346 n.31 (3d Cir. 1987).

[9] Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).

[10] Cohen, *Captives*, *supra* note 3, at 3. Although the Supreme Court has never explicitly stated that mental illnesses are medical illnesses, courts consistently interpret medical care to encompass mental health care. *See, e.g.*, *Partridge*, 791 F.2d at 1187; *Inmates of Allegheny County Jail*, 612 F.2d at 763; *Bowring*, 551 F.2d at 47.

[11] 42 U.S.C. § 1983 (2000). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

endorsed a policy that violated the inmate's Eighth Amendment rights.[12] In addition, plaintiffs must show that this failure resulted in substantial harm to the mentally ill inmate.[13]

A municipal policy is unconstitutional if it fails to provide adequate mental health care to an inmate.[14] However, courts have failed to agree upon precise standards for what constitutes "adequate" mental health care in jails.[15] As a result, cases involving nearly seemingly analogous facts may result in contradictory outcomes. One court may find the case suitable to take before a jury while another court may find that a trial is not warranted.[16]

This Comment argues that jail policies lacking professional mental health evaluations constitute a violation of inmates' Eighth Amendment rights. Thus, if plaintiffs have sufficient evidence showing that the jail policies lack these evaluations, they have grounds for taking their section 1983 claim to a jury. Part I discusses how plaintiff-estates may hold a municipality liable for its jail policies under section 1983 and the Eighth Amendment. Part II illustrates how vague mental health care standards

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[12] *See* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978) (holding section 1983 applies to municipality that implements or executes policy which results in constitutional violations); *Estelle*, 429 U.S. at 104-05 (holding deliberate indifference to serious medical needs of inmates constitutes violation of Eighth Amendment in section 1983 action).

[13] *See Monell*, 436 U.S. at 694 (holding that policy must be "moving force" behind constitutional violation); *Colburn I*, 838 F.2d 663, 667-68 (3d Cir. 1988) (finding suicide is actionable under section 1983); *Monmouth County Corr. Inst'l Inmates*, 834 F.2d at 347 (citing *Archer v. Dutcher*, 733 F.2d 14, 16 (2d Cir. 1984), for proposition that denial of medical care that causes inmate to suffer life-long handicap or permanent loss is sufficiently serious to give rise to liability for Eighth Amendment violation).

[14] *Inmates of Allegheny County Jail*, 612 F.2d at 763 (holding failure to provide professional mental health examinations constitutes Eighth Amendment violation under *Estelle*).

[15] *See* Ogloff, *supra* note 1, at 122-23 (stating that courts have failed to provide basic, constitutionally acceptable requirements for identifying and treating mentally ill inmates). In the absence of a Supreme Court standard for constitutionally acceptable mental health care in jails, courts have struggled to translate the *Estelle* standard, deliberate indifference to serious medical need, to the mental health context. *Compare Inmates of Allegheny County Jail*, 612 F.2d at 763 (holding denial of access to mental health diagnosis and treatment violates Supreme Court's constitutional standard in *Estelle*), *with* Estate of Novack v. County of Wood, 226 F.3d 525, 532 n.3 (7th Cir. 2000) (finding certain policies, such as provision of professional mental health evaluations, while desirable, not constitutionally mandated under *Estelle*).

[16] *Compare* Estate of Cills v. Kaftan, 105 F. Supp. 2d 391, 403 (D.N.J. 2000) (denying motion for summary judgment because failure to provide professional mental health evaluations constitutes genuine issue of material fact regarding jail policy's constitutionality), *with Novack*, 226 F.3d at 532 (granting motion for summary judgment because failure to provide professional mental health evaluations does not constitute genuine issue of material fact regarding jail policy's constitutionality).

have led two courts, working with nearly identical facts, to irreconcilably different conclusions. Part III argues that courts should extend the constitutional standard for serious medical need to claims for inadequate mental health care. Part IV proposes a mental health standard that ensures consistent outcomes among courts. This standard will lead to improved jail policies and, ultimately, fewer inmate suicides.

I. BACKGROUND

Plaintiffs must prove three elements to successfully bring suit against a municipality for jail policies that contribute to a mentally ill inmate's suicide. First, plaintiffs must demonstrate that the municipality is liable because it has endorsed the jail policy at issue.[17] Second, plaintiffs must demonstrate that the jail policy resulted in the violation of the inmate's Eighth Amendment rights.[18] Finally, plaintiffs must allege that these claims fall under the auspices of title 42, section 1983 of the U.S. Code.[19]

A. Jail Policies

Municipalities administer their own individual jail systems.[20] Consequently, they are responsible for the procedures that jail personnel utilize in supervising inmates.[21] When a municipality authorizes jail personnel to develop and implement procedures, courts deem these procedures to represent the municipality's official policy.[22] Official policies may include formal rules and procedures or may develop from informal custom and usage by jail personnel.[23]

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[17] *Monell*, 436 U.S. at 690.

[18] Farmer v. Brennan, 511 U.S. 825, 832 (1994).

[19] *Monell*, 436 U.S. at 690 (holding section 1983 applies to municipality that implements or executes policy which results in constitutional violations).

[20] Ogloff, *supra* note 1, at 110-11.

[21] Richard L. Elliott, *Evaluating the Quality of Correctional Mental Health Services: An Approach to Surveying a Correctional Mental Health System*, 15 BEHAV. SCI. & L. 427, 430 (1997) (discussing correctional facility policies within framework of "customer focus" and emphasizing need to ensure physical well-being of both prison inmates and officials). The scope of this discussion is restricted to the function of jail policies in protecting inmates. *Id.* However, policies should also protect anyone whom the jail system affects, including jail personnel, taxpayers, and the families of inmates. *Id.*

[22] *See* Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986) (stating that any proper course of action that authorized decision-makers take represents act of official governmental policy).

[23] *Id.* at 480-81; *see* Adickes v. S.H. Kress & Co., 398 U.S. 144, 167 (1970) (holding that, although written law does not authorize it, Congress intended to include custom and usage in section 1983 because such practices could be so permanent and well-settled as to

Jail policies primarily control the everyday aspects of jail life, such as providing food, clothing, shelter, and medical care.[24] Often these official policies include providing mental health care, including the detection and treatment of mental illness.[25] Jail systems house inmates for only short periods, which severely limits the choice of methods for detecting and treating mental illness.[26] Essentially, jails must rely on mental health screening procedures to detect mental illness and to divert mentally ill inmates to a mental health facility when necessary.[27]

The lack of initial mental health screenings can ultimately contribute to inmate suicide.[28] Accordingly, effective screening procedures are especially critical to jail mental health policies.[29] Such policies should mandate that jail personnel utilize mental health screening procedures to identify inmates with potential mental illness, including suicidal tendencies.[30] Jail personnel must then place suicidal inmates on "suicide

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constitute custom or usage with force of law). Although municipalities sanction and order these official policies, they may delegate actual policymaking authority to jail officials. *See Pembaur*, 475 U.S. at 480-83. Nevertheless, municipalities are ultimately responsible for the official policies they create. *Id.*

[24] Hudson v. Palmer, 468 U.S. 517, 526-27 (1984).

[25] Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980).

[26] *See* Ogloff, *supra* note 1, at 110-11 (distinguishing treatment alternatives of prisons versus jails). In contrast, because prisons house inmates for a year or more, they have a greater opportunity to develop a variety of programs to monitor inmates' mental illnesses throughout incarceration. *Id.*

[27] *Id.* at 127. Initial mental health screenings are different than professional mental health evaluations. *Id.* Jail personnel with limited mental health training routinely perform initial screenings. *Id.* Qualified mental health professionals, such as board-certified psychiatrists and psychologists, perform professional mental health evaluations once jail personnel, through initial screening procedures, suspect an inmate is mentally ill. *Id.* at 129. While mental health screenings are required for all jail inmates upon entry into the jail system, only those with serious mental illnesses are constitutionally entitled to a professional mental health exam. *Id.* at 124. *See* Cohen, *Captives*, *supra* note 3, at 7-8 (identifying need for treatment as primary constitutional right and need for proper screenings as ancillary right).

[28] *See* Cohen, *Captives*, *supra* note 3, at 35-36 (identifying suicide as possible consequence of delay in treatment of mentally ill inmates). Cohen argues that the duty to treat inmates who are suicide risks is a "preventative duty." *Id.* at 14.

[29] *See* Cohen, *Custodial Suicide*, *supra* note 7, at 35 (lamenting failure of legal system to require screening of all inmates for suicide risk because liability frequently centers on access to inmate information).

[30] *See generally*, Ogloff, *supra* note 1, at 125 (emphasizing need for screening procedures in jail mental health programs due to severe threat suicide poses on inmate safety). Ogloff, Roesch and Hart propose an in-take screening procedure in which properly trained paraprofessionals, nurses, or correctional officers conduct short, twenty-minute interviews with incoming inmates to assess and flag potential mental illness. *Id.* at 127. Jail personnel should perform these screenings within the first twenty-four hours of admitting the inmate

watch." Jail personnel sequester at-risk inmates from the general jail population and monitor them closely.[31] Jail mental health policies may also provide for the dispensation of medications that alleviate symptoms of mental illness.[32]

Some jail policies require jail personnel to identify inmates with possible mental illnesses and suicidal tendencies during the intake screening for the purpose of treatment.[33] Mental health professionals then conduct more intensive mental health evaluations on those identified inmates.[34] These professionals diagnose and recommend appropriate treatment for inmates with mental illness, which may include diversion to a mental health facility.[35] Once qualified mental health professionals determine that mentally ill inmates no longer pose a risk of suicide, they authorize the release of those inmates into the general jail population.[36]

A majority of jails, however, limit mental health treatment solely to the intake screening and do not provide any professional diagnostic or treatment services.[37] Unqualified jail personnel may release mentally ill

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to a jail, and within one week of admission to a prison. *Id.* at 128; *accord* Cohen, *Custodial Suicide*, *supra* note 7, at 35-36.

[31] Cohen, *Custodial Suicide*, *supra* note 7, at 36 n.15 (stating prison staff place "at risk" inmates in "safe" cells under close observation). Many possible preventative measures exist, including the removal of dangerous items from the inmates' cells so they cannot use them to harm themselves. *See* Hayes, *supra* note 1, at 408 (outlining components of successful prevention program). At least one court has indicated that preventative measures alone, without actual knowledge of an inmate's suicide risk, is sufficient to shield jail officials from liability. State Bank of St. Charles v. Camic, 712 F.2d 1140, 1146 (7th Cir. 1983) (holding that officers took reasonable measures to prevent inmate's suicide when they were unaware that inmate was high suicide risk, but nevertheless removed prisoner's belt and shoe laces to guard against suicide attempts).

[32] Ogloff, *supra* note 1, at 130.

[33] For a discussion of model mental health screening procedures for jails, *see id.* at 128.

[34] Cohen, *Custodial Suicide*, *supra* note 7, at 36. "Mental health professionals" encompass anyone who is qualified by virtue of training and experience to provide diagnosis and treatment for mental illness. Cohen, *Captives*, *supra* note 3, at 8.

[35] Ogloff, *supra* note 1, at 126.

[36] *See* Cohen, *Captives*, *supra* note 3, at 38-39 (surmising that "seriousness" requirement of medical or mental health need mandates that treatment end when condition is no longer serious). When a mentally ill inmate is no longer suicidal, ethical dilemmas may arise. *Id.* at 39 (stating that mental health provider must release inmate requiring further treatment into general population). According to Fred Cohen, the "seriousness" requirement of the medical or mental health need, which he terms the "obviousness test," is seriously flawed. *Id.* at 18, 38-39. It implies that inmates' Eighth Amendment right to health care is conditioned on the seriousness of their condition. *Id.* Accordingly, when the symptoms of their illnesses subside, as when they no longer pose a threat of suicide, they lose their constitutional right to treatment. *Id.*

[37] Ogloff, *supra* note 1, at 130 (stating that national survey demonstrated that jails

inmates into the general population, believing they do not pose a risk of suicide. As a result, inmates whom jail personnel identify as mentally ill, but not at-risk for suicide, may succeed in committing suicide.[38] In such cases, the decedent inmate's estate may seek a legal remedy for the suicide. The estate will claim that the jail's denial of mental health treatment constitutes cruel and unusual punishment under the Eighth Amendment.

B. The Eighth Amendment's Prohibition Against Cruel and Unusual Punishment

The Eighth Amendment serves to protect individuals from cruel and unusual punishment.[39] Courts have long held that jail policies denying an inmate's basic needs constitute cruel and unusual punishment.[40] Such basic needs include the provision of medical care.[41] Further, courts have held that the denial of adequate mental health care also constitutes a violation of the inmate's Eighth Amendment rights.[42]

The underlying principle of the Eighth Amendment is to prohibit any punishment that is grossly disproportionate to the severity of the crime.[43] In 1976, the Supreme Court acknowledged that the concept of cruel and unusual punishment must comply with society's evolving standards of

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emphasize mental health screening over other services).

[38] *See* Ogloff, *supra* note 1, at 125-26 (noting difficulty in identifying suicidal inmates). Even with the bare minimum protection these policies provide, inmates may still commit suicide because screenings alone are insufficient to diagnose and treat mental illness. *Id.* at 127. In addition, inmates who develop mental illness after the intake screening may not be properly diagnosed. *Id.* Finally, because the personnel responsible for intake screenings have little mental health training, they may not recognize more subtle manifestations of mental illness and suicidal tendency. *See id.* at 128-29 (stating that correctional officers who are in frequent contact with inmates should be trained to recognize signs of mental disorder).

[39] U.S. CONST. amend. VIII. The drafters of the Eighth Amendment's prohibition of cruel and unusual punishment intended it to prohibit forms of inhumane punishment, such as certain methods of execution, reasoning that jails should not deny inmates civil treatment by virtue of their incarceration. *See, e.g.*, Gregg v. Georgia, 428 U.S. 153, 169-73 (1976); Anthony F. Granucci, *"Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning*, 57 CAL. L. REV. 839 (1969).

[40] Farmer v. Brennan, 511 U.S. 825, 832 (1994); Bowring v. Godwin, 551 F.2d 44, 46-47 (4th Cir. 1977).

[41] Estelle v. Gamble, 429 U.S. 97, 102-03 (1976).

[42] *Bowring*, 551 F.2d at 48; Newman v. Alabama, 503 F.2d 1320, 1330 (5th Cir. 1974).

[43] O'Neil v. Vermont, 144 U.S. 323, 340 (1892); Granucci, *supra* note 39, at 842-43; *see* Gregg v. Georgia, 428 U.S. 153, 173 (1976) (holding that, under Eighth Amendment, punishment must harmonize with "the dignity of man").

decency in the treatment of inmates.[44] Consequently, the Court expanded the scope of the Eighth Amendment so that "punishment" entailed more than physically savage reprimand.[45] The Court held that any course of action, or failure to act, that undermines the inmate's personal dignity constitutes cruel and unusual punishment.[46] The Court held that such a course of action includes the failure to provide any basic need that would prevent an inmate's undue suffering.[47]

The Supreme Court has held that the denial of adequate medical care constitutes cruel and unusual punishment.[48] The Court reasoned that inmates are incapable of providing themselves with medical care because they are incarcerated.[49] Consequently, they must rely on jail personnel for their medical needs.[50] The Court has also found that the denial of adequate medical care can result in prolonged physical suffering and even death for the inmate.[51] This denial would therefore constitute cruel and unusual punishment proscribed by the Eighth Amendment.[52] Thus, when officials deny inmates access to medical evaluations and treatment for serious medical needs, they violate the

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[44] *Estelle*, 429 U.S. at 102-03.

[45] *Id.*; *see e.g.*, *Farmer*, 511 U.S. at 825 (holding transsexual inmate's release into general jail population, where he was raped and attacked, constituted cruel and unusual punishment under Eighth Amendment).

[46] *See, e.g.*, *Estelle*, 429 U.S. at 102; *Gregg*, 428 U.S. at 173; Trop v. Dulles, 356 U.S. 86, 101 (1958).

[47] *See Farmer*, 511 U.S. at 832 (stating that prison inmates have Eighth Amendment right to be confined under conditions that provide "adequate food, clothing, shelter, and medical care"); Rhodes v. Chapman, 452 U.S. 337, 349-50 (1981) (holding that Constitution "does not mandate comfortable prisons" but that inhumane conditions are impermissible).

[48] *Estelle*, 429 U.S. at 103. The Eighth Amendment's prohibition against cruel and unusual punishment applies only to convicted criminals. *See Rhodes*, 452 U.S. at 345 (discussing application of Eighth Amendment to conditions in specific prisons). Pretrial detainees, on the other hand, must rely on the Fourteenth Amendment's Due Process Clause. *See* Bell v. Wolfish, 441 U.S. 520, 535 (1979). Under the Fourteenth Amendment, pretrial detainees must demonstrate that the conditions of confinement amount to punishment without due process of law. *Id.* However, the requirement for the provision of medical care under the Fourteenth Amendment is at least coextensive with that required by the Eighth Amendment. *See* City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983) (stating that government is required to provide medical care to persons apprehended by police). Therefore, although jails house both pretrial detainees and convicted criminals, the constitutional analysis and mental health treatment proposal in this Comment applies equally to both populations. *See id.*

[49] *Estelle*, 429 U.S. at 104.

[50] *Id.* at 103. *See* Newman v. Alabama, 503 F.2d 1320, 1329-30 (5th Cir. 1974) (noting recent proliferation of cases in which courts base judicial scrutiny of prison medical practices on fact of inmates' dependency on prison officials by virtue of incarceration).

[51] *Estelle*, 429 U.S. at 103.

[52] *Id.*

Eighth Amendment.[53]

Lower courts have also recognized that the constitutional duty to provide adequate medical health care necessarily includes the duty to provide adequate mental health care.[54] These courts reason that the denial of mental health care may also cause undue suffering in violation of the Eighth Amendment.[55] Thus, a jail policy that fails to provide adequate mental health care to inmates constitutes an Eighth Amendment violation.[56] In this situation, the estates of mentally ill inmates who have committed suicide may bring a section 1983 claim against the municipality for an Eighth Amendment violation.

C. 42 U.S.C. § 1983

Section 1983 enables individuals to sue state actors, such as municipalities, for constitutional violations.[57] Plaintiffs must satisfy three

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[53] *See* West v. Keve, 571 F.2d 158, 162 (3d Cir. 1976) (holding that denial of diagnosis and treatment violates *Estelle* standard).

[54] Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979); *see* Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1187 (5th Cir. 1986) (recognizing that psychiatric or psychological need may be as critical as serious medical need, and that deprivation of adequate mental health care may also result in due process violation). The Supreme Court has never directly addressed the Eighth Amendment in the context of mental health care in jails. *See* Ogloff, *supra* note 1, at 119. In addition, lower courts have failed to reach a consensus on the legal requirements of adequate mental health care. *See id.* at 123 (finding standards developed in Fourth and Fifth Circuits are vague and fail to specify guidelines for identifying and treating mentally ill inmates). However, the courts' willingness to treat mental illness as a component of medical illness reflects changing societal norms over the last half century. *See* Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977). Society once believed that mental illness was an affliction without a cure. *Id.* Modern science has rejected that notion of mental illness by developing treatment techniques that help to alleviate the suffering of the mentally ill. *Id.* These advances remove mental illness from the mystical realm and place it into the world of hard science, within the medical model of diagnosis and treatment. Doctors can diagnose mental illness, propose a treatment method, and monitor the patient's progress just as they would a medical illness. Thus the medical community applies the same standard, that of diagnosis and treatment, to both physical and mental illnesses.

[55] *See, e.g., Partridge*, 791 F.2d at 1187; *Inmates of Allegheny County Jail*, 612 F.2d at 763; *Bowring*, 551 F.2d at 47.

[56] *Bowring*, 551 F.2d at 47.

[57] 42 U.S.C. § 1983 (2000). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

requirements to bring successful section 1983 actions.[58] The first element of a section 1983 claim requires plaintiffs to sue only "persons" for constitutional deprivations.[59] Municipalities and other local government units are persons within the meaning of section 1983.[60] Therefore, in a section 1983 action, plaintiffs can sue the municipality responsible for the jail that allegedly violated the inmate's constitutional rights.[61]

The second element of a section 1983 claim requires plaintiffs to prove that the defendant was acting under the authority of state law when the constitutional violation occurred.[62] Municipalities are responsible for administering state law.[63] Municipalities act under authority of state law when they create or sanction policies for the administration of jails.[64] Therefore, the Supreme Court has held that these municipalities are liable under section 1983 for endorsing a policy that violates an inmate's constitutional rights.[65]

The third element of a section 1983 claim requires plaintiffs to prove that the inmate suffered a constitutional violation.[66] The Supreme Court recognizes that a violation of an inmate's Eighth Amendment rights is sufficient to successfully bring a section 1983 claim.[67] The Court has also

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[58] West v. Atkins, 487 U.S. 42, 48 (1988).

[59] 42 U.S.C. § 1983. Initially, the Supreme Court held that municipalities were immune from section 1983 actions. Monroe v. Pape, 365 U.S. 167, 190 (1961). The Court reasoned that Congress had no constitutional power to impose any civil liability upon county or town organizations, because they fell within the realm of state law. *Id.* Therefore, Congress did not intend municipalities to be included in section 1983. *Id.* However, the Supreme Court later overruled its prior decision and held that Congress did intend municipalities and other local government units to be "persons" within the meaning of section 1983. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 663, 690 (1978). An important limitation to municipal liability remains. A municipality cannot be held liable solely because it employs a tortfeasor (i.e., under a theory of *respondeat superior*). *Id.* at 694.

[60] *Monell*, 436 U.S. at 690.

[61] *Id.*

[62] *West*, 487 U.S. at 50; *Adickes*, 398 U.S. at 152.

[63] *See Monroe*, 365 U.S. at 190 (stating that county and town organizations are "mere instrumentality" for administration of state law).

[64] *Cf. Monell*, 436 U.S. at 690 (holding that municipalities may be held liable under section 1983 for implementing or executing unconstitutional policies).

[65] *See id.* at 694-95 (holding that local government liable under section 1983 when official policy inflicts injury); Payne v. Churchich, 161 F.3d 1030, 1043 (7th Cir. 1998).

[66] 42 U.S.C. § 1983 (2000).

[67] *See Monell*, 436 U.S. at 690 (holding that municipalities can be sued under section 1983). Courts may determine the constitutionality of a municipal policy in two ways. *Colburn II*, 946 F.2d 1017, 1027 (1991) (citing Polk County v. Dodson, 454 U.S. 312 (1981)). First, courts may find that the policy on its face is unconstitutional. *Id.* Second, courts may infer that an otherwise constitutional policy is unconstitutional if it directly causes inmates to suffer a constitutional violation. *Id.* When a reasonable person could perceive that a policy would violate inmates' constitutional rights, courts may infer the policy is

made clear that inadequate medical care policies for inmates violate their Eighth Amendment rights.[68]

To prove that the municipality violated the Eighth Amendment, plaintiffs must demonstrate that the municipality was deliberately indifferent to the inmate's serious medical needs.[69] This standard requires two showings. First, plaintiffs must prove that the inmate's medical need was sufficiently serious.[70] Second, plaintiffs must prove that jail personnel knew or should have known about the inmate's serious medical need, but failed to address it.[71] Courts also recognize that the denial of adequate mental health care may constitute a violation of the inmate's Eighth Amendment rights.[72] Accordingly, these courts require plaintiffs to demonstrate that the municipality was deliberately indifferent to the inmate's serious mental health need.[73]

The first showing for a section 1983 claim alleging inadequate mental health care is that the mental health need is sufficiently serious to give rise to a constitutional violation.[74] Traditionally, courts determine the seriousness of this need in one of two ways.[75] First, they presume seriousness if a doctor diagnoses the condition and concludes that it

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unconstitutional. *See* City of Canton v. Harris, 489 U.S. 378, 390 (1989) (holding that deficient policy may be so obvious and inadequacy so likely to result in constitutional violation that courts can reasonably infer policy is unconstitutional).

[68] Farmer v. Brennan, 511 U.S. 825, 832 (1994).

[69] Estelle v. Gamble, 429 U.S. 97, 102-03 (1976).

[70] *Id.* at 104.

[71] *Id.* The term "deliberate indifference" has never been fully defined by the courts. *Farmer*, 511 U.S. at 835. Courts agree that deliberate indifference entails something more than mere negligence. *Id.* However, deliberate indifference does not rise to the level of acts or omissions intended to cause harm or known to result in harm. *Id.*

[72] Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979); Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977). *But see City of Canton*, 489 U.S. at 387 n.5 (declining to consider respondent's claim that city had custom of denying medical care to detainees with emotional and mental ailments).

[73] *See Bowring*, 551 F.2d at 47-48 (applying serious medical need and deliberate indifference standards in context of mental health claim under section 1983); Ogloff, *supra* note 1, at 119-20 (stating that circuit courts have interpreted Supreme Court's *Estelle* requirements of serious medical need and deliberate indifference to context of mental illness).

[74] Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)); *Bowring*, 551 F.2d at 47; *see* Simmons v. City of Philadelphia, 947 F.2d 1042, 1059 (3d Cir. 1991) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978), for proposition that serious medical need requirement applies to municipal liability under section 1983 as well).

[75] Gaudreault v. Municipality of Salem, 923 F.2d 203, 208 (1st Cir. 1990); Monmouth County Corr. Inst'l Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987); Hendrix v. Faulkner, 525 F. Supp. 435, 454 (N.D. Ind. 1981).

requires treatment.[76] Second, they may presume seriousness if an objectively reasonable person could easily recognize that the inmate's condition warranted a doctor's attention.[77]

Plaintiffs may satisfy this first showing by demonstrating that the inmate possesses a serious mental health need in a variety of ways. For example, doctors, family members, or the inmates themselves may notify jail personnel that they have diagnosed mental illnesses.[78] In addition, circuit courts have held that a demonstrated susceptibility to suicide, such as a prior suicide attempt, indicates a serious mental illness.[79]

The second showing for a section 1983 claim alleging inadequate mental health care is deliberate indifference.[80] A municipality manifests deliberate indifference when it sanctions a policy that causes an inmate to suffer a constitutional violation.[81] Courts may infer deliberate

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[76] *Gaudreault*, 923 F.2d at 208; *Monmouth County Corr. Inst'l Inmates*, 834 F.2d at 347; *Hendrix*, 525 F. Supp. at 454; *see* Cohen, *Captives*, *supra* note 3, at 18 (criticizing description of "serious" as flawed because medical involvement is not determinative of seriousness). *But see* LLOYD, *supra* note 5, at 20 (criticizing use of "previous psychiatric contact" as unsatisfactory measure of mental disorder). Lloyd finds that this measure does not indicate the mental state of the inmate just prior to suicide because it may refer to a psychiatric illness from the distant past. *Id.* Futhermore, jail officials may assume that previous psychiatric contact is a reliable measure of mental disorder when, in fact, it may heavily borrow from information that family members and the inmate have provided. *Id.*

[77] *See* Cohen, *Captives*, *supra* note 3, at 18 (criticizing description of "serious" as flawed because laypersons may be able to recognize serious medical need, but not mental health need). The Ninth Circuit has deviated from this traditional definition of "seriousness" and held that a condition is serious if the failure to treat it could lead to further significant injury or needless suffering. McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992).

[78] *See, e.g.*, *Gaudreault*, 923 F.2d at 208; Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1184 (5th Cir. 1986); Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981).

[79] *Colburn I*, 838 F.2d 663, 669 (3d Cir. 1988); *Partridge*, 791 F.2d at 1187 (recognizing that serious psychiatric or psychological need may be as acute as serious medical need, and that deprivation of adequate mental health care may result in due process violation); *see* Freedman v. City of Allentown, 853 F.2d 1111, 1115 (3d Cir. 1988) (holding that section 1983 claim alleging prison officials failed to prevent mentally ill inmate's suicide, when officials knew that inmate was prone to suicide, may survive dismissal).

[80] Estelle v. Gamble, 429 U.S 97, 104 (1976). Although *Estelle* is apparently the first Supreme Court case to utilize the term "deliberate indifference," the Court never clearly defines the term. *See* Farmer v. Brennan, 511 U.S. 825, 840 (1994) (observing that deliberate indifference is judicial construct that does not appear in Constitution or statutes). The Court states that the deliberate indifference standard ensures that only inflictions of punishment carry liability for Eighth Amendment violations. *Id.* at 841.

[81] City of Canton v. Harris, 489 U.S. 378, 388-89 (1989). In *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978), the Supreme Court overruled its prior holding in *Monroe v. Pape*, 365 U.S. 167, 187 (1961), by holding that municipalities may be sued under section 1983 for constitutional violations resulting from its official policies. *Monell*, 436 U.S. at 690. The Court in *Monell* also held that execution of a municipal policy must be a "moving force" behind the constitutional violation to hold a municipality liable. *Id.* at 694-95. Eight years later, the Court held that the language and reasoning behind *Monell* compelled the

indifference when the likelihood of the constitutional violation is sufficiently obvious.[82] Courts presume that the municipality must have known its policy was unconstitutional, but failed to revise the policy.[83] However, a municipality may counter evidence of deliberate indifference by showing the absence of a direct causal link between its policy and the violation.[84]

A municipality is not liable unless the constitutional deprivation resulted directly from the municipality's official policy, custom, or usage.[85] Therefore, a court will not impose municipal liability unless plaintiffs establish a direct causal link between the jail policy or custom and the alleged constitutional deprivation.[86] Accordingly, courts frequently refuse to allow plaintiffs to take their section 1983 claims before a jury when they fail to establish this direct causal link.[87]

D. The Summary Judgment Standard in Section 1983 Actions

Before a jury hears a case, the defendant may move for summary judgment to defeat the plaintiff's claim.[88] A court will grant a motion for

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conclusion that courts may hold a municipality liable for a single decision by municipal policymakers. Pembaur v. City of Cincinnati, 475 U.S. 469, 480-81 (1986).

[82] *City of Canton*, 489 U.S. at 390.

[83] *Id.*

[84] *Cf. Monell*, 436 U.S. at 690-91, 694 (finding that municipality is liable only when injury is inflicted through execution of official policy).

[85] *Id.* at 694; *City of Canton*, 489 U.S. at 385; *see* Adickes v. S.H. Kress & Co., 398 U.S. 144, 167 (1970) (stating that "official policy" may also include informal custom and usage).

[86] *City of Canton*, 489 U.S. at 385. This limitation is a useful method of distinguishing acts of the municipality from acts of the employees of the municipality. *See Pembaur*, 475 U.S. at 479-80. The Supreme Court has recognized that the "official policy" requirement distinguishes acts of employees from acts of municipalities. *Id.* In addition, this requirement ensures that courts hold municipalities liable only for actions for which they are responsible. *Id.* However, section 1983 claims for inadequate mental health care pose special problems for plaintiffs who seek to establish deliberate indifference. *See* Cohen, *Captives*, *supra* note 3, at 38 (stating deliberate indifference standard makes it difficult for plaintiffs in mental health claims to prevail). The causal link between jail mental health policies and the alleged constitutional violation may be hard to prove. *See* Bowring v. Godwin, 551 F.2d 44, 48 n.3 (4th Cir. 1977) (emphasizing subjective nature of diagnosing mental illness). For example, although most medical professionals will consistently agree on the diagnosis of a broken bone, there is no such unanimity in the diagnosis of mental illness. *See* Cohen, *Captives*, *supra* note 3, at 26 (distinguishing between medical and mental health care needs based on degree of objectivity involved in diagnosis).

[87] *See* Cohen, *Captives*, *supra* note 3, at 33 (identifying difficulty of recovery for plaintiffs in mental health claims).

[88] FED. R. CIV. P. 56(c). "The motion shall be served at least 10 days before the time fixed for the hearing. . . ." Either the plaintiff or the defending party may move for summary judgment. FED. R. CIV. P. 56(a), (b).

summary judgment if it finds that the plaintiff has failed to prove that a genuine issue of material fact exists between the parties.[89] In this way, defendants may prevail as a matter of law rather than risk the adverse factual findings of a jury.[90]

Courts use summary judgment to dispose of factually unsupported claims before investing the time and expense into lengthy jury trials.[91] To bring their cases before a jury, plaintiffs must first demonstrate to the court that they have sufficient evidence to support their claims.[92] When defendants believe that plaintiffs have failed to make this showing, they may move for summary judgment.[93] In a motion for summary judgment, the moving party claims that the nonmoving party lacks sufficient persuasive evidence to compel a jury verdict in the nonmoving party's favor.[94]

Courts deny motions for summary judgment only when they find that the nonmoving party has presented a genuine issue of material fact.[95] Accordingly, a nonmoving party can defeat a motion for summary judgment by demonstrating that a genuine issue of material fact exists.[96] However, if the nonmoving party fails to present a genuine issue of material fact, the court will grant summary judgment in favor of the moving party.[97] When a court grants a motion for summary judgment,

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[89] FED. R. CIV. P. 56(a), (c).

[90] FED. R. CIV. P. 56(c) (stating successful motion for summary judgment entitles moving party to judgment as matter of law).

[91] Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

[92] FED. R. CIV. P. 8(a). Rule 8(a) states: "A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." *Id.*

[93] FED. R. CIV. P. 56(c). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See Celotex*, 477 U.S. at 322-23 (interpreting Rule 56(e) to not require moving party to provide evidence negating nonmoving party's claim).

[94] Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986).

[95] FED. R. CIV. P. 56(c), (e). Courts must look to the requirements of the substantive law in order to determine the presence of a "material fact." *Anderson*, 477 U.S. at 248-49. Courts must also look to the sufficiency of the nonmoving party's evidence in order to determine the presence of a "genuine issue." *Id.* at 249.

[96] *Anderson*, 477 U.S. at 250.

[97] FED. R. CIV. P. 56(c). Rule 56(e) does not require moving parties to produce evidence that opposes the nonmoving parties' claims to satisfy the summary judgment standard. Adickes v. S.H. Kress & Co., 983 U.S. 144, 160 (1970). In considering a motion for summary judgment, the court must make all reasonable inferences in favor of the nonmoving party.

the moving party prevails as a matter of law.[98] Thus, the court precludes a jury from resolving the factual issues at trial.[99]

Municipalities often move for summary judgment in section 1983 claims for Eighth Amendment violations.[100] To defeat a defendant's summary judgment motion, plaintiffs must demonstrate a genuine issue of material fact relating to the section 1983 claim.[101] Plaintiffs can demonstrate this by providing sufficient evidence that a municipality was operating under state law when it violated an inmate's Eighth Amendment rights.[102]

Courts disagree as to what constitutes a genuine issue of material fact, that is, what evidence is sufficient to allow plaintiffs to prevail in a motion for summary judgment in this type of section 1983 claim. In particular, courts disagree whether evidence that a municipal policy fails to provide professional mental health evaluations presents a genuine issue of material fact.[103] As a result, plaintiffs may fail to establish a genuine issue of material fact related to the alleged Eighth Amendment

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Id. at 158-59. The court may not base its grant of summary judgment on the merits of the case. *Anderson*, 477 U.S. at 249; First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

[98] *Anderson*, 477 U.S. at 250. Attorneys tend to confuse motions for directed verdict, FED. R. CIV. P. 50, with motions for summary judgment, FED. R. CIV. P. 56, because both involve judgments as a matter of law. *See* 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 56.30[1], 56-208 to 56-209 (3d ed. 2001). However, the moving party brings these motions during different phases of a trial. *Id.* Courts consider Rule 56 motions for summary judgment before commencement of the trial. *Id.* Courts consider Rule 50 motions for directed verdict during the course of the trial. *Id.*

[99] *Anderson*, 477 U.S. at 250.

[100] *See, e.g.*, Estate of Novack v. County of Wood, 226 F.3d 525, 527, 532 (7th Cir. 2000) (affirming defendant-municipality's motion for summary judgment because plaintiff failed to prove presence of genuine issue of material fact in section 1983 claim); *Colburn II*, 946 F.2d 1017, 1030-31 (3d Cir. 1991) (affirming district court's grant of summary judgment to defendant-municipality because plaintiff failed to present genuine issue of material fact regarding municipality's liability for inmate's suicide); Williams v. City of Lancaster, 639 F. Supp. 377, 378, 383 (E.D. Pa. 1986) (granting defendant-municipality's motion for summary judgment because its failure to seek medical care for suicidal inmate was mere negligence, not deliberate indifference).

[101] FED. R. CIV. P. 56(e); *see* Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (establishing standards for Rule 56(e) motion).

[102] West v. Atkins, 487 U.S. 42, 48 (1988).

[103] *Compare* Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979) (holding that system of care does not meet constitutional minimum when seriously mentally ill inmates are blocked from diagnosis and treatment), *and* Estate of Cills v. Kaftan, 105 F. Supp. 2d 391 (D.N.J. 2000) (holding failure to provide professional mental health evaluations constitutes sufficient evidence of Eighth Amendment violation), *with Novack*, 226 F.3d at 527, 532 (finding professional mental health evaluations desirable but not mandatory under Eighth Amendment).

violation.[104]

II. STATE OF THE LAW

Courts are divided on what constitutes a genuine issue of material fact in section 1983 mental health care claims involving municipal jail policies. Two recent cases serve to illustrate this division.[105] In *Estate of Cills v. Kaftan*, a New Jersey district court held that evidence of inadequate professional mental health evaluations could support a section 1983 claim and thus present a genuine issue of material fact. Accordingly, the court denied the defendant-municipality's motion for summary judgment.[106] However, in *Estate of Novack v. County of Wood*, the Seventh Circuit did not find that the denial of a professional mental health evaluation supported a section 1983 claim and that such denial could present material issues to be tried before a jury. Consequently, the *Novack* court granted summary judgment.[107]

A. Estate of Cills v. Kaftan

In *Estate of Cills v. Kaftan*,[108] Michael Cills was a twenty-year-old man with a history of depression, suicide attempts, and drug abuse.[109] He pled guilty to a drug possession charge and began serving a sixty-day jail sentence at the Cumberland County Department of Corrections ("DOC").[110] DOC personnel placed Cills on suicide watch after he

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[104] *See* FED. R. CIV. P. 56(c); *Celotex*, 477 U.S. at 322-23 (interpreting Rule 56(c) to mandate entry of summary judgment when plaintiff fails to prove essential element of claim). Alternately, courts may dismiss plaintiffs' section 1983 claims for Eighth Amendment violations for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). Motions for summary judgment and motions to dismiss are very different. *See generally*, 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 56.30[1], 56-208 (3d ed. 2001). First, only the defending party may bring a motion to dismiss, whereas either party may bring a motion for summary judgment. *Id.* at 56-209. Second, a successful motion for summary judgment results in judgment for the moving party as a matter of law. *Id.* However, a successful motion to dismiss does not result in a judgment in favor of either party as a matter of law or fact. *Id.* Therefore, the court does not preclude the plaintiff from bringing a future claim against the defendant. *Id.* Third, the court is restricted to the pleadings themselves when considering a motion to dismiss, whereas the court may examine the entire record in a motion for summary judgment. *Id.* at 56-211.

[105] *Novack*, 226 F.3d at 532 n.2; *Cills*, 105 F. Supp. 2d at 403.

[106] *Cills*, 105 F. Supp. 2d at 403.

[107] *Novack*, 226 F.3d at 532 & nn.2-3.

[108] 105 F. Supp. 2d 391 (D.N.J. 2000).

[109] *Id.* at 393.

[110] *Id.* The Court treats the Cumberland County Department of Corrections as the legal equivalent of a municipal jail. *Id.* at 401-02. Cills is a convict, thus he falls within the

attempted suicide while in custody.[111] One month after Cills' suicide attempt, jail personnel consulted a state-certified mental health screener. This mental health screener evaluated Cills and told the DOC nurses that he was no longer suicidal.[112] However, they never consulted a mental health professional to provide a diagnosis and to suggest treatment.[113] Nevertheless, jail officials at the senior staff meeting voted to remove Cills from suicide watch, pursuant to the DOC's verbal suicide policy. Eight hours after his removal, Cills committed suicide.[114]

Cills' estate brought a section 1983 suit against the DOC, claiming that the DOC's verbal suicide policy violated Cills' Eighth Amendment rights. The suicide policy did not require prison officials to consult a mental health professional to evaluate Cills before removing him from suicide watch. Thus the estate claimed that the DOC's failure to require such an evaluation constituted an Eighth Amendment violation by effectively ignoring Cills' suicidal tendencies.[115]

The DOC moved for summary judgment. It alleged that the plaintiff-estate had failed to establish a genuine issue of material fact regarding

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purview of the Eighth Amendment. *See* Bell v. Wolfish, 441 U.S. 520, 537 (1979) (holding that Eighth Amendment scrutiny applies only after state obtains verdict of guilt consistent with due process).

[111] *Cills*, 105 F. Supp. 2d at 393. The prosecutor's report indicates that Cills was placed on suicide watch after another inmate reported that Cills had expressed a desire to kill himself. *Id.* at 394 n.8.

[112] *Id.* at 394-95. James Brown was a state-certified mental health screener for the Cumberland County Guidance Center. *Id.* Although the court does not provide Brown's credentials, it implies that he was not a psychiatrist or psychologist by pointing out that no psychiatrist or psychologist was on staff at the jail prior to Cills' suicide. *Id.* at 394. According to Brown, Cills was "perky and talkative with a positive outlook" and he had "no suicidal ideation and did not appear to be a suicide risk." *Id.* at 395.

[113] *Id.* at 394 n.10. The record indicates that the jail employed a physician, but that he was not a psychiatrist or psychologist. *Id.* at 394 n.9. In addition, jail personnel did not contact the physician prior to removing Cills from suicide watch. *Id.*; *see* Ogloff, *supra* note 1, at 128 (establishing intake screening is merely preliminary step required to secure mental health treatment to those inmates with serious mental illness).

[114] *Cills*, 105 F. Supp. 2d at 395-96. At the time of Cills' suicide, the DOC did not have a written suicide policy. *Id.* at 394-95. Instead, they operated pursuant to a verbal policy. *Id.* According to that policy, an inmate was taken off suicide watch only after the decision had been reviewed and voted on by the senior staff. *Id.* The only medical input with respect to an inmate's suicide status came from the nursing supervisor. *Id.* at 394. There was no trained mental health professional on staff until after Cills' suicide. *Id.* at 394 n.9.

[115] *Id.* at 392. Cills' estate also sued certain low-level employees of the DOC, alleging that they violated Cills' constitutional rights to adequate medical care and personal security by removing him from suicide watch despite knowing he was still a suicide risk. *Id.* at 392-93. In this same disposition, the court granted the low-level employees' motion for summary judgment, finding that they lacked the deliberate indifference necessary for a finding of constitutional deprivation under the Eighth Amendment. *Id.* at 393.

the policy's constitutionality. In particular, the DOC alleged that its policy did not cause Cills' suicide, and therefore did not violate the Eighth Amendment.[116] The district court denied summary judgment, finding that a genuine issue of material fact existed. This question of material fact centered on whether the DOC's policy failed to provide inmates with professional mental health evaluations prior to removing them from suicide watch. According to the court, a jury could find that the jail's suicide policy violated the Eighth Amendment.[117] However, the Seventh Circuit reached the opposite conclusion in a factually identical case it decided the same year.

B. Estate of Novack v. County of Wood

In *Estate of Novack v. County of Wood,* [118] Shannon Novack was a mentally ill inmate who committed suicide after jail personnel removed him from suicide watch. Wood County officers incarcerated Novack in the Wood County Jail for outstanding warrants. Only days prior to Novack's arrest, a physician had diagnosed him as a paranoid schizophrenic with suicidal tendencies. Both Novack's mother and an employee of Norwood Mental Health Center notified jail personnel of his mental illness and suicide risk. Pursuant to standard jail policy, a police officer performed a medical screening on Novack during booking.[119]

The screening officer concluded from the statements of Novack's mother and doctor, and from the screening itself, that Novack had a possible mental illness. The officer placed Novack under suicide watch. However, the officer did not notify jail personnel that she had placed Novack in the observation cell due to mental illness. As a result, jail personnel were unaware that Novack was mentally ill and removed him from suicide watch without consulting a psychiatrist or psychologist. After jail personnel had placed Novack in the general inmate population, other inmates reported that Novack repeatedly struck the wall of his cell and giggled uncontrollably.[120] Novack committed suicide at the Wood County Jail less than one month after his initial diagnosis and

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[116] *Id.*

[117] *Id.*

[118] 226 F.3d 525 (7th Cir. 2000).

[119] *Id.* at 527-29.

[120] *Id.*at 528; *see generally* Bruce L. Danto, *Suicide Litigation as an Agent of Change in Jail and Prison: An Initial Report,* 15 BEHAV. SCI. & L. 415, 418 (1997) (asserting that mentally ill inmates who manifest unusual or bizarre behavior must be under continuous observation).

subsequent incarceration.[121]

Novack's estate brought a section 1983 suit against the Wood County Jail for violation of Novack's Eighth Amendment rights. The estate claimed that Wood County Jail was deliberately indifferent to Novack's needs by having inadequate policies and practices for treating mentally ill inmates.[122] In response, Wood County Jail moved for summary judgment, alleging that Novack's estate had failed to establish a genuine issue regarding the constitutionality of Wood County Jail's mental health policy. The district court granted the Wood County Jail's motion for summary judgment.[123] The Seventh Circuit affirmed the lower court's grant of summary judgment.[124] In particular, the circuit court found that the municipal policy was constitutional on its face.[125] The court stated that the plaintiff had failed to show that the municipal policy caused Novack to suffer a constitutional violation. Therefore, the plaintiff's evidence regarding the jail's mental health policy did not raise a genuine issue of material fact.[126]

In both *Estate of Cills v. Kaftan* and *Estate of Novack v. County of Wood*, the jail policies at issue failed to provide professional mental health examinations.[127] In addition, both claims centered upon the suicide of inmates with serious mental illnesses.[128] Each court gave drastically different import to that fact.[129] The *Cills* court found that this deficiency in the jail's policy constituted a material fact supporting a section 1983

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[121] *Novack*, 226 F.3d at 528.

[122] *Id.* at 528-29.

[123] *Id.*

[124] *Id.* at 531-32.

[125] *Id.* at 531 n.3. The plaintiff attempted to prove the DOC's policy was unconstitutional by alleging it violated state law requirements. *Id.* The court rightly noted that state law requirements do not determine a policy's constitutionality. *Id.*; *see* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694-95 (1978) (holding municipal policy unconstitutional if it is "moving force" causing constitutional violation). However, sufficient evidence existed to find a genuine issue of material fact regarding the municipal policy's constitutionality. *Novack*, 226 F.3d at 532 n.3. In particular, the policy failed to provide professional mental health evaluations. *Id.* at 534 (Williams, J., dissenting).

[126] *Novack*, 226 F.3d at 532.

[127] *Id.* at 535 (Williams, J., dissenting); Estate of Cills v. Kaftan, 105 F. Supp. 2d 391, 403 (D.N.J. 2000).

[128] *Novack*, 226 F.3d at 527; *Cills*, 105 F. Supp. 2d at 393.

[129] *Compare Cills*, 105 F. Supp. 2d at 403 (holding failure to provide professional mental health evaluations constitutes genuine issue of material fact whether municipality violated inmate's Eighth Amendment rights), *with Novack*, 226 F.3d at 532 n.3 (agreeing with dissent that deficiencies in jail policy could improve treatment of mentally ill inmates, but holding that jail policy is nevertheless constitutional because jail is not required to provide most humane treatment to survive constitutional scrutiny).

claim.[130] However, the *Novack* court did not address the failure to provide professional mental health evaluations.[131] That court presumably found this failure immaterial to a showing of deliberate indifference.

III. ANALYSIS

Cills and *Novack* illustrate the inconsistency with which courts determine the constitutionality of jail mental health policies. In particular, courts disagree on whether the Eighth Amendment requires jail policies to provide professional mental health evaluations prior to removing an inmate from suicide watch.[132] However, there are three reasons why jail policies lacking such evaluations should constitute material evidence to support an Eighth Amendment claim. First, the standard for constitutionally mandated medical care in jail settings applies with equal force to the provision of mental health care. Second, the Eighth Amendment's rationale compels courts to apply the medical standard to physical and mental illnesses equally. Finally, courts should hold municipalities accountable when mentally ill inmates commit suicide in order to prevent future suicides in jails.

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[130] *Cills*, 105 F. Supp. 2d at 403.

[131] *Novack*, 226 F.3d at 532.

[132] As a result of this inconsistency, only plaintiffs who bring their claims in certain courts will defeat summary judgment and have the opportunity to go to trial. *See, e.g., Inmates of Allegheny County Jail*, 612 F.2d at 754; *Cills*, 105 F. Supp. 2d at 403. Plaintiffs in other courts, however, will lose at summary judgment, which effectively bars them from recovery. *See, e.g., Colburn II*, 946 F.2d at 1017; *Novack*, 226 F.3d at 525; *Williams*, 639 F. Supp. at 377. In addition, the First and Seventh Circuits seem most apt to deny recovery to plaintiffs in these claims. Cohen, *Captives*, *supra* note 3, at 24-26. Both circuits require the more vigorous standard of "shock the conscience" in order to find deliberate indifference in claims for inadequate mental health care in jails. *Id.* Fred Cohen identifies this lack of consistency as a source of plaintiffs' failure to prevail in Eighth Amendment claims involving jail mental health policies. *Id.* at 33-34. He finds that lower courts have struggled to reconcile seemingly inconsistent Supreme Court holdings regarding the objective "seriousness" component of an alleged Eighth Amendment violation. *Id.* In *Estelle v. Gamble*, 429 U.S. 97 (1976), the Supreme Court articulates the objective element of "serious medical need" as a threshold requirement for mandated medical care in prison settings. *Id.* at 104. However, in *Wilson v. Seiter*, 501 U.S. 294, 298 (1991), and *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981), the Supreme Court articulated the objective component as a "serious deprivation" in claims involving condition of confinement. Whether "serious medical need" and "serious deprivation" are functionally identical has become a matter of speculation. Cohen, *Captives*, *supra* note 3, at 33-34. The import of this problem centers on whether plaintiffs are required to show a serious harm or injury resulting from the constitutional deprivation, rather than a mere serious medical need. *Id.* Cohen finds that the use of a serious harm or injury as a mechanism to determine Eighth Amendment violations is a "recovery-denying maneuver." *Id.*

A. The Standard: Deliberate Indifference to Serious Mental Health Need

Courts typically apply the constitutional standard for medical care, deliberate indifference to serious medical need, to the context of mental illness, albeit with less vigor.[133] In the context of medical health care, courts agree that the denial of access to diagnosis and treatment constitutes an Eighth Amendment violation.[134] However, in the context of mental health care, courts cannot agree whether a similar denial of mental health care also constitutes deliberate indifference amounting to an Eighth Amendment violation.[135]

Courts should apply the medical standard of deliberate indifference to serious need to the mental health context with equal force for two reasons. First, the seriousness of the need for medical care and mental health care are equivalent.[136] Second, a municipality's deliberate indifference to inmates' serious mental health needs is sufficiently obvious to find a genuine issue of material fact.[137]

1. Mental Health Need: The Seriousness Component

The two presumptions for finding a serious medical need, evidence of a prior diagnosis and treatment or the obviousness of the need for treatment, should apply whether the need is medical or mental.[138] First,

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[133] *See, e.g., Colburn II*, 946 F.2d at 1017; Cleveland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989); Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987); Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182 (5th Cir. 1986); Bee v. Greaves, 744 F.2d 1387 (10th Cir. 1984); Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983); *Inmates of Allegheny County Jail*, 612 F.2d at 754; Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980).

[134] *See, e.g., Estelle*, 429 U.S. at 103-04 (1976); *Colburn I*, 838 F.2d 663, 669 (3d Cir. 1988); *Partridge*, 791 F.2d at 1187; *Wellman*, 715 F.2d at 271-72; *West*, 571 F.2d at 162; *Bowring*, 551 F.2d at 48; *Newman*, 503 F.2d at 1328-32.

[135] *Compare* West v. Keve, 571 F.2d 158,162 (3d Cir. 1978) (holding failure to provide evaluations and diagnosis violate Eighth Amendment standard in *Estelle*), *with Novack*, 226 F.3d at 532 n.3 (citing Anderson v. Romero, 72 F.3d 518, 524 (7th Cir. 1995)) (stating Eighth Amendment does not require "progressive" policies such as evaluations and diagnosis).

[136] *Colburn I*, 838 F.2d at 669 (quoting *Partridge*, 791 F.2d at 1187).

[137] *See Inmates of Allegheny County Jail*, 612 F.2d at 763 (holding standard of deliberate indifference applies in evaluating constitutional adequacy of psychiatric care that jail provides).

[138] Courts have repeatedly held that treatment of a psychiatric or psychological condition may present a "serious medical need" under the *Estelle* formulation. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); *see, e.g., Partridge*, 791 F.2d at 1187; *Wellman*, 715 F.2d at 273; Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041; *Inmates of Allegheny County Jail*, 612 F.2d at 763; *Bowring*, 551 F.2d at 47; *see also Partridge*, 791 F.2d at 1184, 1187 (finding that prior diagnosis and suicide attempt are sufficient to establish municipality's deliberate indifference to inmate's serious mental

like medical illness, mental illness is subject to diagnosis and treatment.[139] Therefore, courts should allow juries to presume seriousness when a physician has diagnosed the inmate with a serious mental illness.[140] Consequently, courts should find that plaintiffs have satisfied the first requirement for establishing a genuine issue of material fact, serious mental health need.[141]

In *Novack*, a reasonable jury could have presumed that Novack's mental health need, as evidenced by a prior diagnosis and treatment, was sufficiently serious to present a genuine issue of material fact.[142] Prior to Novack's incarceration, a physician had diagnosed him with paranoid schizophrenia and prescribed medication to treat the mental illness.[143] In addition, both Novack's mother and the physician had informed jail personnel that Novack suffered from schizophrenia.[144] Therefore, a jury could have presumed that Novack's mental health need was sufficiently serious. Accordingly, a genuine issue of material fact existed regarding the seriousness of Novack's mental health need.[145]

Second, juries may presume that a mental health need is serious based on its obviousness to a reasonable person. Courts routinely permit such presumptions in the medical context, reasoning that medical illness may manifest itself physically, thereby allowing a reasonable person to perceive the need for treatment.[146] For example, a broken bone protruding from the skin is sufficiently obvious to warrant medical attention.[147] Similarly, a reasonable person can perceive a mental illness when it manifests itself physically.[148] Inmates who manifest bizarre and self-destructive behavior would alert a reasonable person that they might require the attention of a mental health professional.[149] For this

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health need).

[139] *See supra* note 54 (discussing how courts have taken notice of changing societal norms regarding mental illness); *Bowring*, 551 F.2d at 47 (finding modern science has rejected notion that mental disturbances are product of "afflicted souls" and therefore beyond scope of counseling, medication, and therapy).

[140] *Partridge*, 791 F.2d at 1187 n.18 (citing *Bowring*, 551 F.2d at 47).

[141] *See Estelle*, 429 U.S. at 104.

[142] *Novack*, 226 F.3d at 527-29.

[143] *Id.* at 527.

[144] *Id.* at 528.

[145] *Id.* at 529 (citing Estate of Cole v. Fromm, 94 F.3d 254, 259 (7th Cir. 1996)).

[146] *Id.*

[147] Cohen, *Captives*, *supra* note 3, at 19.

[148] *See Colburn I*, 838 F.2d at 669.

[149] *See Novack*, 226 F.3d at 530 (citing Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir. 1997); State Bank of St. Charles v. Camic, 712 F.2d 1140, 1146 (7th Cir. 1983)). The Seventh Circuit stated that bizarre behavior alone is insufficient to establish a serious mental health need.

reason, a jury may presume a serious mental health need when a plaintiff presents evidence that the inmate has previously attempted suicide.[150] Consequently, courts should find that this plaintiff has satisfied the first requirement in presenting a genuine issue of material fact.[151]

In *Cills*, for example, the decedent actually had attempted suicide prior to his ultimately successful attempt. In fact, Cills attempted suicide while in custody just weeks prior to his death.[152] Therefore, as the court correctly determined, any reasonable person could perceive that Cills' suicidal tendency constituted a serious mental health need. Accordingly, Cills' serious mental health need constituted a genuine issue of material fact regarding the policy's constitutionality.[153]

2. Deliberate Indifference: The Obviousness Component

The second requirement to determine a genuine issue of material fact, deliberate indifference, also applies to the mental health context.[154] When the need for mental health treatment is sufficiently obvious, the failure to provide such treatment constitutes deliberate indifference.[155] In particular, the failure to provide a professional mental health evaluation prior to removing an inmate from suicide watch constitutes deliberate indifference.[156]

Suicidal tendencies constitute a sufficiently obvious mental health need under the deliberate indifference standard.[157] Municipalities respond to this obvious need by implementing suicide prevention policies such as suicide watch. Removal from suicide watch effectively

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Id. The behavior must indicate a substantial likelihood of self-destructiveness to qualify as an obvious, serious mental health need. *Id.*

[150] *See* Freedman v. City of Allentown, 853 F.2d 1111, 1115 (3d Cir. 1988) (acknowledging that section 1983 claim alleging prison officials failed to prevent mentally ill inmate's suicide, when officials knew that inmate was prone to suicide, may be sufficient to survive dismissal).

[151] *See Estelle*, 429 U.S. at 104.

[152] *Cills*, 105 F. Supp. 2d at 393.

[153] *Id.* at 402-03.

[154] *See Colburn I*, 838 F.2d 663, 670 (3d Cir. 1988).

[155] City of Canton v. Harris, 489 U.S. 378, 390 (1989).

[156] Estate of Cills v. Kaftan, 105 F. Supp. 2d 391, 393 (D.N.J. 2000) (citing Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979)).

[157] *See Freedman*, 853 F.2d at 1115 (holding that section 1983 claim alleging prison officials failed to prevent mentally ill inmate's suicide, when officials knew that inmate was prone to suicide, may be sufficient to survive dismissal).

operates to deny an inmate further mental health treatment.[158] The inmate returns to the jail's general population and no longer benefits from the close scrutiny of suicide watch. When jail policies permit unqualified personnel to remove inmates from suicide watch, these policies effectively deny inmates' further mental health treatment.[159] Therefore, this denial of treatment for an obvious mental health need constitutes deliberate indifference.[160]

However, some courts may distinguish mental illness from medical illness because mental illness is more difficult for a layperson to detect.[161] Courts may reason that, because mental illness affects the mind rather than the body, a layperson may not be able to identify a mental illness. In addition, commentators note that qualified mental health professionals frequently disagree on the diagnosis of a mental illness. Therefore, courts may conclude that a municipality is not deliberately indifferent to an inmate's serious mental health need because that need is not sufficiently obvious.[162] Accordingly, courts may grant summary judgment to the defendant-municipality because the plaintiff failed to present a genuine issue of material fact.[163] Nevertheless, a mental health need is sufficiently obvious so that courts may infer that the municipality was deliberately indifferent to the need.[164]

The distinctions between the nature of medical and mental illness do not warrant their disparate treatment by courts for two reasons. First, prior diagnoses or histories of suicide attempts are sufficiently obvious for juries to infer deliberate indifference.[165] These prior diagnoses and

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[158] *See* Cohen, *Captives*, *supra* note 3, at 38 n.46 (stating that seriousness and deliberate indifference speak to when care must start, but do not indicate when care may end).

[159] *See id.* at 38-39 (stating caregiver's mandate may end with having inmates function in general population).

[160] *Cills*, 105 F. Supp. 2d at 393 (citing Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979)).

[161] *See* Bowring v. Godwin, 551 F.2d 44, 48 n.3 (4th Cir. 1977) (characterizing diagnosis of mental illness as "extremely subjective art").

[162] *See* Cohen, *Captives*, *supra* note 3, at 38-39 (noting that diagnosis of mental illness is subjective so that mental health professionals often disagree on proper diagnosis).

[163] *E.g.*, Estate of Novack v. County of Wood, 226 F.3d 525, 532 & n.3 (7th Cir. 2000).

[164] *See, e.g.*, Freedman v. City of Allentown, 853 F.2d 1111, 1115 (3d Cir. 1988) (acknowledging that section 1983 claim alleging prison officials failed to prevent mentally ill inmate's suicide, when officials knew that inmate was prone to suicide, may be sufficient to survive dismissal).

[165] *See generally*, Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182, 1184 (5th Cir. 1986) (finding genuine issue of material fact in case in which father of jail inmate, who later committed suicide, had informed arresting officer of son's previous nervous breakdown); Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (reversing dismissal of complaint because it alleged sufficient evidence of prior psychiatric diagnosis and

suicide histories are clear and reliable measures of obviousness.[166] During intake screenings, jail personnel routinely ask inmates if they have a history of mental illness or suicide attempts. Municipalities therefore create records during these screenings, records that evidence their awareness of inmates' serious mental health needs.[167] These records permit a reasonable jury to determine deliberate indifference without speculating whether a reasonable person would have detected the serious mental health need.[168]

Second, the reasoning behind the disparate treatment of medical and mental illness is intrinsically flawed.[169] Presumably, a municipality has already detected an inmate's serious mental health need by virtue of the fact that the inmate is on suicide watch. The crucial inquiry in this situation is not whether the inmate requires treatment. Rather the inquiry is whether the inmate no longer requires treatment, that is, whether the inmate is able to function outside the constraints of suicide watch.[170] Jail personnel are not qualified to make that determination.[171] However, mental health professionals are qualified to detect mental illness and determine whether an inmate may safely return to the jail's general population.[172] Therefore, courts should presume deliberate

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behavior clearly evincing some mental illness requiring treatment to state claim for relief).

[166] *See* Gaudreault v. Municipality of Salem, 923 F.2d 203, 208 (1st Cir. 1990) (citing *Monmouth County Corr. Inst'l Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) for proposition that prior diagnosis or obvious mental health need is sufficient to find serious mental illness); *Freedman*, 853 F.2d at 1115; *Partridge*, 791 F.2d at 1184; *Woodall*, 648 F.2d at 272.

[167] Ogloff, *supra* note 1, at 128.

[168] *See* Farmer v. Brennan 511 U.S. 825, 837-39 (1994). Determining a municipality's actual awareness that its policy violates inmates' Eighth Amendment rights would be a very difficult task for juries to perform. *Id.* Therefore, the Supreme Court has established that courts must use an objective test to determine municipal liability under section 1983. *Id.* However, when determining the liability of individual municipal officials under section 1983, juries may determine their subjective states of mind. *Id.*

[169] *See Partridge*, 791 F.2d at 1187 & n.18 (citing Bee v. Greaves, 744 F.2d 1387, 1395 (10th Cir. 1984), *cert. denied*, 469 U.S. 1214 (1985); *Woodall*, 648 F.2d at 272; Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979); Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977)). Many courts agree that no principled distinction exists between medical illness and mental health illness for the purposes of determining an Eighth Amendment violation. *Id.*

[170] *See* Cohen, *Captives*, *supra* note 3, at 38-39 (stating caregiver's mandate may end with having inmates function in jail's general population).

[171] Wellman v. Faulkner, 715 F.2d 269, 272-73 (7th Cir. 1983).

[172] *See id.* (quoting testimony of expert witness that no one other than a psychiatrist is qualified to evaluate serious mental illness in jail system); *Inmates of Allegheny County Jail*, 612 F.2d at 763 (holding "when inmates with serious mental ills are effectively prevented from being diagnosed and treated by qualified professionals the system of care does not meet constitutional requirements set forth by *Estelle*"). Courts are also willing to defer to

indifference when municipal policies fail to provide professional mental health evaluations prior to removing an inmate from suicide watch.[173] Consequently, courts may ensure that inmates with serious mental illness do not commit suicide.[174]

B. The Rationale: Prevention of Undue Suffering

The rationale behind the standard of deliberate indifference to serious medical need, the prevention of undue suffering, also applies in the mental health context.[175] The failure to provide professional mental health evaluations may create undue suffering in violation of the Eighth Amendment.[176] Courts have held that when the failure to provide mental health treatment causes permanent loss, including suicide, that failure constitutes the infliction of undue suffering.[177] Municipalities can alleviate the undue suffering of suicide by providing mental health professionals to assess whether the inmate is capable of functioning in the jail's general population.[178] Therefore, the failure to provide these evaluations constitutes deliberate indifference that violates the Eighth

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the judgment of mental health professionals in determining a municipality's deliberate indifference to inmates' serious mental health needs. Cohen, *Captives*, *supra* note 3, at 28-29 (citing *Langley v. Coughlin*, 715 F. Supp. 522 (S.D.N.Y. 1989) for proposition that "professional judgment standard" of *Youngberg v. Romeo*, 457 U.S. 307 (1982), may apply to jail context).

[173] *See Wellman*, 715 F.2d at 272-73 (recognizing importance of on-site psychiatrist qualified to evaluate and treat psychiatric emergencies such as suicide).

[174] *See Colburn I*, 838 F.2d 663, 669 (3d Cir. 1988) (citing *Partridge*, 791 F.2d at 1187, for proposition that jail policy which fails to take steps to prevent suicide of mentally ill inmates constitutes deliberate indifference to serious mental health need); *Wellman*, 715 F.2d at 272-73 (holding failure to provide professionals mental health evaluations to detect and prevent suicide indicates a serious systematic deficiency in jail policy).

[175] *Inmates of Allegheny County Jail*, 612 F.2d at 762; *see Partridge*, 791 F.2d at 1187 (recognizing that certain psychiatric or psychological needs may be a serious medical need, and that deprivation of adequate mental health care may also result in due process violation).

[176] *See* Estelle v. Gamble, 429 U.S. 97, 103 (1976) (finding that denial of medical care may cause pain and suffering that serves no "penological purpose," thereby constituting cruel and unusual punishment).

[177] *See* Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (citing *Archer v. Dutcher*, 733 F.2d 14, 16 (2d Cir. 1984) for proposition that, when denial of medical care causes inmate to suffer life-long handicap or permanent loss, that need is sufficiently serious to give rise to liability for Eighth Amendment violation); *see also Colburn I*, 838 F.2d at 668; Elliott, *supra* note 21, at 428 (finding common sentiment among mental health community members, such as American Psychiatric Association, that inmates require treatment to protect them and to relieve suffering).

[178] *See supra*, note 172.

Amendment.[179]

However, some courts have found that the denial of professional mental health evaluations will not create undue suffering sufficient to constitute an Eighth Amendment violation.[180] These courts state that the provision of mental health evaluations, while desirable, is not mandatory under the Eighth Amendment.[181] They reason that jails are not required to provide the most progressive, humane mental health care available.[182] Accordingly, these courts find no genuine issue of material fact regarding a jail policy's constitutionality when that policy lacks professional mental health evaluations.[183] Nevertheless, the prevention of undue suffering is mandatory, not merely desirable, under the Eighth Amendment.[184]

The rationale behind the Eighth Amendment, the prevention of undue suffering, justifies extending inmates' rights to include treatment for serious mental illness.[185] The Supreme Court has held that the Eighth Amendment must continually evolve to encompass societal norms of decency.[186] For example, courts did not recognize that the denial of medical care constituted an Eighth Amendment violation until 1976.[187]

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[179] *See Wellman*, 715 F.2d at 272-73 (recognizing importance of on-site psychiatrist qualified to evaluate and treat psychiatric emergencies such as suicide); Ogloff, *supra* note 1, at 125 (asserting mental health evaluations are crucial to lessen prevalence of jail suicides).

[180] *See, e.g.*, Estate of Novack v. County of Wood, 226 F.3d 525, 532 (7th Cir. 2000) (holding that municipal policy did not cause inmate to experience undue suffering in violation of Eighth Amendment).

[181] *Id.* at 532 n.3 (holding municipal policies, while not perfect, do not rise to level of constitutional inadequacy).

[182] *See* Rhodes v. Chapman, 452 U.S. 337, 349 (1991) (finding that Constitution does not mandate comfortable prisons); Anderson v. Romero, 72 F.3d 518, 524 (7th Cir. 1995) (stating Eighth Amendment does not require most humane and progressive prison administration possible); Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (stating Eighth Amendment merely requires medical necessity, not desirability).

[183] *See, e.g., Novack*, 226 F.3d at 532 (holding plaintiffs had not established genuine issue of material fact regarding municipal policy's constitutionality).

[184] Estelle v. Gamble, 429 U.S. 97, 103 (1976).

[185] Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); *see* Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182, 1187 (5th Cir. 1986) (recognizing that certain psychiatric or psychological need may be as critical as serious medical need, and that deprivation of adequate mental health care may also result in due process violation).

[186] *Estelle*, 429 U.S. at 103-04; Trop v. Dulles, 356 U.S. 86, 101 (1958). Society's evolving standards of decency correspond with its evolving concept of what constitutes "disease." *See* Cohen, *Captives*, *supra* note 3, at 15-17 (noting that concept of disease is not static, but shifts over time and cultures).

[187] *Estelle*, 429 U.S. at 97.

At that time, the Supreme Court declared that evolving standards of decency required jails to provide adequate medical care.[188] These evolving standards must now encompass mental illness because inmates with mental illness may suffer as greatly as inmates with medical illness.[189] Society now recognizes that mental illness can create mental anguish as intense as the physical pain medical illness produces.[190] Accordingly, evolving standards of decency now require jails to provide adequate mental health care.[191] Therefore, courts should hold that the denial of professional mental health evaluations is a material fact in the determination of a jail policy's constitutionality.

C. The Critical Need for Adequate Mental Health Policies in Jail Systems

Courts must hold municipalities liable for inadequate mental health policies in order to reduce the growing prevalence of jail suicide.[192] Courts function under the continuing obligation to ensure that municipal policies do not cause inmates any undue suffering.[193] When courts fail to hold municipalities to a sufficiently high standard of mental health care, municipalities escape liability for the violation of mentally ill inmates' constitutional rights.[194]

Because of the temporary nature of jail terms, adequate mental health screenings are especially critical.[195] Studies have shown that inmates are most susceptible to suicide during the first twenty-four hours of incarceration, while they are housed in the jail system.[196] Scholars attribute this phenomenon to the shock of arrest and the uncertainty of

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[188] *Id.* at 103-04.

[189] Bowring v. Godwin, 551 F.2d 44, 47-48 (1977).

[190] *Id.*

[191] *See, e.g., Partridge*, 791 F.2d at 1187; *Inmates of Allegheny County Jail*, 612 F.2d at 763; *Bowring*, 551 F.2d at 47-48; Ruiz v. Estelle, 503 F. Supp. 1265, 1338 (S.D. Tex. 1980).

[192] *See* Ogloff, *supra* note 1, at 125 (asserting mental health evaluations are crucial to lessen prevalence of jail suicides).

[193] Estelle v. Gamble, 429 U.S. 97, 103-04 (1976).

[194] *See, e.g.*, Estate of Novack v. County of Wood, 226 F.3d 525, 532 (7th Cir. 2000) (granting defendant-municipality's motion for summary judgment because plaintiffs had not established genuine issue of material fact regarding municipal policy's constitutionality).

[195] *See* Ogloff, *supra* note 1, at 110-11 (finding that inmates pose greater risk of suicide in jail systems due to temporary nature of confinement).

[196] *See* Hayes, *supra* note 1, at 405; *see also* Danto, *supra* note 120, at 419 (stating that inmates are at high risk for suicide shortly after admission to facilities); Ogloff, *supra* note 1, at 110-11 (stating that because inmates are jailed shortly after arrest, they pose higher risk of suicide).

upcoming arraignments and trials.[197] In addition, inmates often arrive at jails under the influence of drugs or alcohol, which increases their susceptibility to irrational behavior and suicide.[198]

Because of the critical need for adequate mental health care in jails, courts must hold municipalities accountable for the failure to prevent the suffering of mentally ill inmates.[199] Accordingly, courts should hold these municipalities accountable by allowing juries to hear cases in which the potential constitutional violation is clear. In particular, juries should hear cases in which a municipal policy fails to provide professional mental health evaluations prior to removing an inmate from suicide watch.[200] Therefore courts should hold that such policies violate the Eighth Amendment and permit a plaintiff's claim, with evidence of such a policy, to survive summary judgment.[201]

By uniformly holding municipalities accountable, courts provide stronger, more consistent guidelines for municipalities to follow in developing suicide prevention policies.[202] Also, courts will induce municipalities wishing to escape liability to create more comprehensive mental health policies that protect inmates' Eighth Amendment rights.[203]

IV. PROPOSAL

Evaluations are crucial to ensuring that inmates receive adequate mental health treatment.[204] Therefore, courts should uniformly find that

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[197] *See* Cohen, *Custodial Suicide*, *supra* note 7, at 46 (attributing prevalence of jail suicide to inmates' fear, depression, or anxiety due to first-time incarceration or intoxication).

[198] *See id.*

[199] Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); *see* Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182, 1187 (5th Cir. 1986) (recognizing that certain psychiatric or psychological need may be as critical as serious medical need, and that deprivation of adequate mental health care may also result in due process violation).

[200] *Inmates of Allegheny County Jail*, 612 F.2d at 762.

[201] *See* Estate of Cills v. Kaftan, 105 F. Supp. 2d 391, 403 (D.N.J. 2000) (holding failure to provide professional mental health evaluations constitutes genuine issue of material fact regarding jail policy's constitutionality).

[202] *See* Danto, *supra* note 120, at 424 (stating that more specific jail standards for mental health and suicide prevention enable courts and municipalities to determine what constitutes adequate mental health care); Ogloff, *supra* note 1, at 122-23 (stating that courts have failed to provide basic, constitutionally acceptable requirements for identifying and treating mentally ill inmates).

[203] *See* Danto, *supra* note 120, at 417 (finding that jail administrators may cite compliance with state-of-the-art policies as part of good faith defense); Ogloff, *supra* note 1, at 134 (stating that "carefully planned and implemented" mental health policies offer far-reaching benefits).

[204] *See* Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983).

a failure to provide adequate mental health care violates the Eighth Amendment, and that such a failure supports a 1983 claim.[205] In particular, jail policies that deny professional mental health evaluations prior to removing inmates from suicide watch show the deliberate indifference necessary to violate the Eight Amendment; therefore, evidence of such a policy presents a question of material fact that allows the plaintiff to bring his claim to a jury.[206]

This proposal is feasible for courts to implement for three reasons. First, sufficient limitations to the proposal ensure that courts will not be unduly burdened. Second, this proposal merely extends an existing standard for medical care claims to the context of mental health care. Finally, this proposal provides advantages to inmates and municipalities alike that clearly outnumber any burdens of implementation.

Municipalities can incorporate a requirement of professional mental health evaluations without undue burden.[207] In particular, municipalities would not incur the additional expense of ensuring mental health services to every inmate.[208] Instead, this proposal limits the provision of

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[205] *See* Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977) (holding inmate is entitled to psychiatric treatment under Eighth Amendment if mental health professional deems it necessary).

[206] *Cills*, 105 F. Supp. 2d at 403; *see* Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979) (holding denial of professional mental health diagnosis and treatment violates Supreme Court's standard from *Estelle*).

[207] *See* Danto, *supra* note 120, at 417. Danto describes the difficulties jail administrators encounter in negotiating the line between what they consider "sound" mental health policy and "state-of-the art." *Id.* Jail administrators may seek to adhere to state or national standards such as those of the American Correctional Association ("ACA"), the Commission on Accreditation for Law Enforcement Agencies ("CALEA"), or the National Commission on Correctional Healthcare ("NCCHC"). *Id.* at 416-19. By citing their adherence to such guidelines, jail administrators may assert a good faith defense when inmates sue them for inadequate mental health care. *Id.* at 417. These standards may reflect state-of-the-art and reasonable minimal guidelines for jails. *Id.* Danto believes these guidelines therefore help to establish greater uniformity and compliance with mental health policies. *Id.* The standards that the ACA, CALEA, and NCCHC have articulated share a common feature. *Id.* All three require the participation of qualified mental health professionals in the assessment of suicidal inmates. *Id.* at 416-19. However, these standards are merely suggestions, not constitutional requirements under *Rhodes v. Chapman*, 452 U.S. 337 (1981). *Id.* at 419.

[208] *See* Cohen, *Captives*, *supra* note 3, at 16-17 (noting that courts should not require municipalities to allocate already sparse resources in order to recognize "diseases" that are not widely recognized as serious mental illnesses, such as compulsive gambling). In addition to financial obstacles to implementing more comprehensive mental health policies, municipalities also demonstrate negative attitudes to this change. *See* Hayes, *supra* note 1, at 408. Municipalities may offer "empty excuses" for not implementing better policies that indicate they are powerless to prevent suicide. *Id.* Hayes finds that attitudinal obstacles like these have a far-reaching, destructive impact on suicide prevention. *Id.*

such evaluations to those inmates with serious mental illness.[209] Mental illness should be sufficiently serious to warrant intervention and treatment by a mental health professional.[210] By requiring that their policies contain professional mental health evaluations, municipalities can identify and treat only those inmates with serious mental illnesses.[211]

Implementing this proposal is also feasible for courts because it merely extends the existing standard for medical care to the context of mental health care.[212] By applying the well-established medical standard to mental health claims, courts can avoid devising a separate standard for mental health care.[213] Therefore, this proposal represents a realistic approach that will not create an undue burden on courts.[214]

This proposal creates advantages that clearly outweigh the burdens of implementation.[215] Inmates with serious mental illness will reap the most obvious advantages of this proposal by virtue of the fact that it can save their lives.[216] By requiring these evaluations, municipalities ensure that only inmates who pose a threat of suicide remain under close scrutiny.[217] In addition, this proposal advantages municipalities because

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Hayes believes that the most powerful way to overcome this obstacle is to highlight the successful jail programs that have achieved significant reductions in suicide rates. *Id.*

[209] *See* Cohen, *Custodial Suicide*, *supra* note 7, at 34 (defining "serious risk" of suicide as "highly probable and imminent"); Ogloff, *supra* note 1, at 120-21 (interpreting "serious medical needs" requirement of *Estelle* to include certain serious mental illness, i.e., not mild depression).

[210] *See Woodall*, 648 F.2d at 272 (holding courts must balance interests of municipalities and inmates so that essential test is necessity of mental health treatment, not desirability).

[211] *Id.*

[212] *See* Estelle v. Gamble, 429 U.S. 97, 103-04 (1976) (articulating medical standard of deliberate indifference to serious medical need). In fact, many courts have already held mental health claims to the *Estelle* standard. *E.g.*, *Colburn II*, 946 F.2d 1017 (3d Cir. 1991); Cleveland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989); Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987); Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182 (5th Cir. 1986); Bee v. Greaves, 744 F.2d 1387 (10th Cir. 1984); Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979); Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980).

[213] *See* Cohen, *Captives*, *supra* note 3, at 3 (noting that medical and mental health care are thoroughly intertwined in principle).

[214] *See Partridge*, 791 F.2d at 1187 (holding courts should apply medical care standard to mental health claims because medical and mental illnesses are sufficiently analogous).

[215] *See* Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (holding courts must balance interests of municipalities and inmates to avoid undue burdens on jail administration).

[216] *See Colburn II*, 946 F.2d at 1030 (finding courts must measure magnitude and obviousness of risk by additional reduction in suicides that improved municipal policy would create).

[217] *But see id.* at 1030-31 (stating courts cannot place municipalities in position of guaranteeing that inmates will not commit suicide).

it creates clear guidelines for adequate mental health care.[218] In turn, this proposal helps municipalities guard against liability for inmates' suicide.[219] Further, this proposal advantages the families of inmates with serious mental illness.[220] In particular, this proposal helps to prevent the loss of loved ones who commit suicide while in custody.[221] Finally, the proposal benefits the entire community.[222] By ensuring that jails implement constitutionally adequate mental health policies, courts can alleviate the community's fears that the mentally ill will commit suicide.[223]

CONCLUSION

The denial of adequate medical care constitutes cruel and unusual punishment in violation of the Eighth Amendment.[224] Under 42 U.S.C. § 1983, inmates may sue the municipality that sanctions a jail policy that violates inmates' Eighth Amendment rights.[225] To establish the constitutionality of a jail policy, inmates must demonstrate that the municipality was deliberately indifferent to their serious medical

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[218] *See* Danto, *supra* note 120, at 424 (stating that more specific jail standards for mental health and suicide prevention enable courts and municipalities to determine what constitutes adequate mental health care); Ogloff, *supra* note 1, at 122-23 (stating that courts have failed to provide basic, constitutionally acceptable requirements for identifying and treating mentally ill inmates).

[219] *See* Cohen, *Custodial Suicide*, *supra* note 7, at 46. The provision of mental health evaluations, and the projected decrease in inmate suicide, also benefit the municipality in its function as an employer. *See id.* Inmate suicide can affect jail personnel in a devastating manner. *Id.* Jail personnel may experience post-traumatic stress syndrome as a result of these suicides. *Id.* By decreasing the number of suicides, a municipality may also ensure the mental well-being of its employees in the jail system. *Id.*

[220] *See, e.g.*, Estate of Cills v. Kaftan, 105 F. Supp. 2d 391, 403 (D.N.J. 2000). The parents of deceased inmates often bring section 1983 actions against jails, seeking a remedy for the loss of their children. *Id.*

[221] *See* Cohen, *Captives*, *supra* note 3, at 39. The need for preventive law is as manifestly desirable as the need for preventive medicine. *Id.* Cohen, *Custodial Suicide*, *surpa* note 3, at 32 (asserting that municipal liability will achieve objective of reducing inmate suicide).

[222] *See* Elliott, *supra* note 21, at 430. A municipality's failure to provide adequate mental health care impacts the community at large. *Id.* The community expects the municipality to utilize tax dollars to ensure public safety by providing treatment for mental illness that may contribute to criminal behavior. *Id.* Similarly, the community expects municipalities to spend its tax dollars efficiently by providing mental health care only to those inmates with serious mental illnesses. *Id.*

[223] *See* Cohen, *Captives*, *supra* note 3, at 39; *see also* Cohen, *Custodial Suicide*, *supra* note 7, at 32 (asserting that municipal liability will achieve objective of reducing inmate suicide).

[224] Estelle v. Gamble, 429 U.S. 97, 103 (1976).

[225] Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).

needs.[226] Jail policies may violate the Eighth Amendment when they do not provide professional mental health evaluations prior to removing mentally ill inmates from suicide watch.[227] The standard of deliberate indifference to serious medical need is capable of applying with equal force to the context of mental illness.[228] In addition, the denial of mental health care may result in undue suffering in violation of the Eighth Amendment.[229] Finally, courts should hold municipalities liable for inadequate mental health care policies to prevent inmate suicides.[230] Therefore, courts should uniformly hold that jail policies that fail to provide professional mental health evaluations prior to removing an inmate from suicide watch constitutes an Eighth Amendment violation.[231]

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[226] *Estelle*, 429 U.S. at 104.

[227] Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979); Estate of Cills v. Kaftan, 105 F. Supp. 2d 391 (D.N.J. 2000).

[228] *See, e.g.*, Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182, 1187 & n.18 (5th Cir. 1986) (citing Bee v. Greaves, 744 F.2d 1387, 1395 (10th Cir. 1984), *cert. denied*, 469 U.S. 1214 (1985); Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981); *Inmates of Allegheny County Jail*, 612 F.2d at 763; Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977).

[229] *See* Monmouth County Corr. Inst'l Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (citing *Archer v. Dutcher*, 733 F.2d 14, 16 (2d Cir. 1984) for proposition that denial of medical care causing inmate to suffer life-long handicap or permanent loss, that need is sufficiently serious to give rise to liability for Eighth Amendment violation).

[230] *See* Cohen, *Captives*, *supra* note 3, at 39; *see also* Cohen, *Custodial Suicide*, *supra* note 7, at 32 (asserting that municipal liability will achieve objective of reducing inmate suicide).

[231] *See Cills*, 105 F. Supp. 2d at 403.