

PUBLIC LAW RESEARCH INSTITUTE

UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW



REPORT

CIVIL LIABILITY FOR SUICIDE BARRIERS

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May 22, 1998

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I. Introduction

Since the Golden Gate Bridge opened in 1937, at least twelve hundred people have jumped from it to their deaths. Bridges in other states and countries also have become attractive sites for suicides and suicide attempts. From time to time, it has been suggested that suicide barriers could reduce the number of suicides that take place on bridges like the Golden Gate Bridge. This working paper examines whether the public entity that administers a bridge -- the Golden Gate Bridge Highway and Transportation District, for example¹ -- would be exposed to liability for damages if it installed a suicide barrier and the barrier failed in some manner, allowing a member of the public to commit suicide.

The working paper approaches the question in two steps. First, it examines whether, under California law, a public entity is civilly liable if an individual uses property the entity administers to commit suicide. Then, it examines whether building a suicide barrier would increase the possibility of the public entity being held liable for damages.

II. Summary

In California, a public entity can be held liable for personal injuries only if a statute specifically provides for liability.² According to §815.2 (a) of the California Government Code, a public entity can be liable for injuries caused by its employees' acts or omissions if the employees themselves would be liable. Under California common law, however, only a person who is in a "special relationship" with someone who commits suicide can be held legally responsible for failing to prevent the suicide. Because there is no "special relationship" between the employees of a public entity administering a bridge and those who might use the bridge to commit suicide, neither a bridge district nor its employees would be liable for an act or omission that resulted in a suicide.

Public entities can also be held liable for injuries that result from a "dangerous condition" of public property.³ A dangerous condition exists only if the condition of the property "creates a substantial . . . risk of injury when such property . . . is used *with due care* in a manner in which it is reasonably foreseeable that it will be used."⁴ While it may be foreseeable that suicides will occur from a bridge, using a bridge to commit suicide is not using the property "with due care." Therefore, the fact that a bridge can be used to commit suicide does not mean that the bridge is in a "dangerous condition," and does not establish a basis for holding the public entity liable.

Neither of these conclusions would change if the design of the bridge were altered by placing a suicide barrier on it. Further, even if there were a legal basis for imposing liability for a suicide, decisions like the decision to build a barrier are afforded special protection under the Government Code. When a public entity exercises its discretion to approve a design, it cannot be held liable so long as substantial evidence supports its decision that the design is a reasonable one.⁵

III. When Liability for Failure to Prevent a Suicide Exists

According to §815 (a) of the California Government Code, "[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person" unless there is a statute providing for liability. Three statutes are relevant to the liability of a public entity for failing to prevent a suicide. One of these statutes, Government Code §815.2, imposes liability for the acts or omissions of public employees if the public employee would him- or herself be liable. The second statute, Government Code §835 imposes liability for dangerous conditions on public property. The third statute, Government Code §830.6 precludes liability for improvements to public property if there is substantial evidence supporting the conclusion that the design was reasonable.

A. Liability Based on the Acts or Omissions of Public Employees

Government Code §815.2 provides, "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee . . ." The question then becomes, when would a cause of action arise against a public employee whose acts or omissions led to a suicide?

Civil liability for failure to prevent a suicide is extremely limited. Ordinarily, suicide is considered an independent intervening cause that negates liability of persons who might otherwise be held responsible for a person's welfare. The independent intervening act of suicide breaks the chain of causation.⁶

A duty to prevent a suicide can arise, however, under limited circumstances. Two elements need to exist before a duty to prevent suicide is created.⁷ First, a special relationship must exist between the potential suicide and the person who might have prevented the suicide. Second, the person who might have prevented the suicide must have had notice of the potential suicide's suicidal tendencies.

Courts have found "special relationships" to exist with regard to the risk of suicide largely in professional relationships, such as the psychiatrist-patient, hospital-patient, or doctor-patient relationship.⁸ A special relationship may also exist between a school official or teacher and a student,⁹ or a jailer or prison official and his or her prisoner.¹⁰ What sets these relationships apart is typically either custody of or control over the person who is likely to commit suicide, or some legal, contractual, or professional obligation to care for that person.

There are no reported cases in California or elsewhere in which a court has found a "special relationship" and a duty to act to prevent a suicide based upon the simple fact that an entity owns or controls the property on which the suicide took place, even if the property has been the site of prior suicides or suicide attempts. The only reported court decision that has come close to such a position is *Sneider v. Hyatt Corporation*,¹¹ a federal district court opinion applying Georgia law. In *Sneider*, the court suggested that a hotel *might* have had a duty to a guest who committed suicide, and commented that the "defendant was on notice that the upper floors of its hotel have become an attractive location for suicides." The court's suggestion that a duty might exist, however, was based on the relationship between a hotel and its guest, and not simply on the ownership of the place where the suicide occurred. The thrust of court's remark concerning past suicides was to the effect that if a special relationship existed, past events should have put the hotel on notice that another suicide was possible.

B. Dangerous Condition of Public Property

Section 835 of the California Government Code provides:

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under [§835.2](#) a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

A dangerous condition is defined as:

a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such

property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.¹²

In *Martinez v. Golden Gate Bridge, Highway and Transportation District*,¹³ an unpublished opinion¹⁴ by the California Court of Appeals for the First Appellate District, the court relied on this section to refuse to find the Golden Gate Bridge District liable for failing to prevent a suicide. The court reasoned that "a person seeking self-destruction is not acting with due care," and that therefore the definition of a dangerous condition in the statute did not include a condition that created a risk of suicide.

While the decision in *Martinez* cannot be cited as precedent, it is consistent with other Court of Appeals decisions interpreting the statute's definition of a "dangerous condition." In *Fuller v. State of California*, for example, the court stated that although "it is foreseeable that persons may use public property without due care, a public entity is not liable for failing to take precautions to protect such persons."¹⁵ Further, "[N]o member of the public may ignore the notice which the condition itself provides."¹⁶ The purpose of the statute imposing liability for dangerous conditions on public property is to protect those who may not be aware of the danger, and the danger of jumping off a bridge is obvious. So long as the bridge is safe enough to allow persons acting with due care to cross it safely, the bridge is not in a "dangerous condition" as defined by the statute. Thus, under existing law, public authorities are not liable for failing to prevent suicides from occurring on the bridges they administer.

IV. Liability After Building a Suicide Barrier

A. Building a Suicide Barrier Would Not Create a Duty to Prevent Suicides

Apparently, some public administrators have expressed a concern that taking steps to reduce the risk of suicides on public property would expose the entity to a greater risk of liability if suicides occur despite the precautions. This concern is unfounded, because taking steps to reduce the risk of suicide would neither create the special relationship that must exist before liability is imposed, nor create a dangerous condition under the terms of the Government Code. Further, the decision to build a suicide barrier would itself be shielded by the design immunity provided for by the Government Code.

1. The Special Relationship

There is no case law to support the idea that a public entity that voluntarily builds a barrier to prevent suicides on property it controls would, by that, create a special relationship between itself and potential suicides.¹⁷ It is true that under some circumstances, the law imposes greater duties on those who go to another's aid than on those who merely stand by and do not attempt to intervene. The Restatement (Second) of Torts has summarized this principle as follows:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.¹⁸

Putting aside for a moment the limitations on liability found in the Government Code, to impose liability for a suicide based on this principle, the suicide's estate would have to show that 1) the barrier was negligently constructed; and either 2) the fact that it was negligently constructed increased the risk of harm to the suicide; or 3) the suicide relied on the barrier to prevent his or her death, and was injured because of that reliance. The problem with this legal theory is that it relies on an understanding of suicide that is very different from the understanding that courts have traditionally adopted. Courts view an act of suicide as intended to cause self-harm, and an argument that the suicide, paradoxically, relied on the barrier and counted on it preventing his attempt, however psychologically sophisticated, would not find legal support.

Further, even if a court accepted this psychological construct of suicide, the argument would turn on showing that the barrier was negligently constructed, that is, that it was in a dangerous condition, and the special protections in the Government Code that apply to dangerous conditions of public property would preclude liability.

2. Dangerous Conditions of Public Property

As discussed above, a public entity is liable for injuries caused by a dangerous condition on public property only if the condition threatens injury to those who use the property with due care. A suicide barrier that reduced the risk of suicide would not be "dangerous condition" simply because an individual committed suicide in spite of the barrier. Following the logic of the *Martinez* case, a barrier would not pose any danger to a person who was acting "with due care," and the statute creates liability only for dangerous conditions that are not immediately apparent to those using public property with due care.

Perhaps the closest case on point is *Fredette v. City of Long Beach*.¹⁹ In *Fredette*, the City of Long Beach was undertaking to improve a pier at a lagoon. Throughout the construction process, the lagoon remained accessible to the public. Lifeguards were provided during limited hours, and the only signs warning of the dangerous diving conditions were far from the water.

The plaintiff in *Fredette* dove off the end of the almost-completed pier and rendered himself a quadriplegic.²⁰ The court concluded that no dangerous condition existed because the lagoon's unsuitability for diving was obvious to anyone exercising due care. Lack of signs or barriers to prevent diving did not create a dangerous condition because it would have been apparent to anyone using due care that diving off the pier was dangerous. "When all the circumstances are considered, the accident occurring here did not result from a momentary miscalculation or lapse on the part of the human agent."²¹

In the case of an obviously very high bridge, building a barrier to prevent suicides would in no way contribute to the danger that jumping off the bridge poses. The dangers inherent in jumping off such bridges are obvious and cannot be ignored by any member of the public using the bridge with due care. A suicide barrier on a bridge would not be a dangerous condition even if it were possible to surmount it.

B. The Need for Due Care in Designing and Building the Barrier

The discussion so far has focused on whether building a suicide barrier could result in liability if a suicide succeeded despite the barrier. A separate issue might arise if it were argued that the barrier was negligently designed or built. If a negligently designed or negligently constructed barrier caused injury to someone using the bridge with due care - a pedestrian, say, or a driver -- the barrier could constitute a dangerous condition for which liability might be imposed.

Somewhat more farfetched, it is possible to imagine a situation in which negligence in the design or construction of a barrier could increase the risk of harm to someone who was merely contemplating suicide. A potential suicide might be harmed in attempting to surmount the barrier, or fall after changing his or her mind, if the barrier were negligently designed or constructed. Under these circumstances, it would seem at least theoretically possible to argue, again invoking § 323 of the Restatement (Second) of Torts, that the public authority's negligence had increased the risk of harm to the person it was intended to benefit.

This argument, however, is purely speculative. No court has ever imposed liability on such a theory, and there would be several strong arguments against liability. One argument, following the *Martinez* case, would be that attempting to surmount a suicide barrier is not "using the property with due care", even if the barrier appears deceptively safe. The second, and stronger argument, is that the public authority would be shielded by the statutory immunity for design decisions conferred on it by § 830.6 of the Government Code.

C. Section 830.6 and Design Immunity

Section 830.6 of the Government Code provides:

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor.

Design immunity is a statutorily created affirmative defense available to public entities when it is argued that the design of an improvement is a "dangerous condition" that caused an injury.²² It is "often raised on motion for summary judgment or non-suit enabling the trial court to find the defense established as a matter of law."²³ If the public entity can show that the allegedly "dangerous condition" was a part of the improvement's design, that it had the discretion to approve the design, and that there was substantial evidence to support its conclusion that the design was reasonable, then the public entity is not liable for injuries the design may have caused.²⁴ More concretely, so long as a suicide barrier's construction conforms to its design, an argument that the design actually increased the risk of harm to someone attempting suicide would be unavailing, so long as the entity approving the design had some substantial evidence to support its conclusion that the design was reasonable.

Even if the argument was that the barrier was negligently constructed -- that it did not in fact conform to its design -- the public entity might still have a defense. Section 830.6 also provides:

Notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design . . . which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee.

Thus, even if a changed condition were to occur through negligent maintenance, the public entity would have to have had notice that the changed condition constituted a dangerous condition and a reasonable time to raise the funds and fix the condition. A simple showing that accidents have occurred may not be enough to show that a changed condition is a dangerous condition if it is not shown that the rate of accident occurrences is statistically significant.²⁵ If there is a changed condition that increases the risk of harm to someone who attempts to circumvent the barrier, the entity administering the bridge would not be liable unless it had notice of the condition and time to fix it.

V. Conclusion

Where public property has been the site of suicides in the past, building a barrier or taking other steps to prevent future suicides would not expose the entity administering the property to significant liability. There is no legal theory currently recognized by California courts that would allow someone who circumvented the barrier and succeeded in committing suicide to recover damages from the public entity, because the entity would not be in a "special relationship" with the suicide, and the barrier would not be a "dangerous condition" of public property.

If someone were injured in attempting suicide, and argued that the barrier increased the risk of harm to them because it was negligently designed or constructed, the only California case dealing with liability for suicides suggests that a court might find that attempting suicide is not using property with "due care" and that therefore the barrier did not constitute a "dangerous condition of public property." In any event, the public entity's liability would be no broader than it would be for any other improvement to public property. Similarly, if a negligent design or negligent construction of a barrier injured an ordinary user of the bridge, the public entity's liability would be the same as for any improvement to public property. In either event, the decision to approve the design would be immunized so long as the entity had substantial evidence to support its decision that the design was reasonable, and the entity would be given a reasonable period of time to correct deficiencies in construction that become known to it.



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Footnotes

1. Although the working paper sometimes refers to the specific situation presented by the Golden Gate Bridge, the research presented is general and can be applied to any public entity in California. It is not intended to be legal advice regarding the specific liability of the Golden Gate Bridge, Highway and

Transportation District. ([back to text](#))

2. Cal. Gov't. Code ♦ 815 (a). ([back to text](#))

3. Cal. Gov't. Code ♦ 835. ([back to text](#))

4. Cal. Gov't. Code ♦ 830 (a) (emphasis added). ([back to text](#))

5. Cal. Gov't. Code ♦ 830.6 ([back to text](#))

6. 6 Witkin, Summary of California Law, Torts, ♦975 (9th ed. 1996 supp.). ([back to text](#))

7. *Nally v. Grace Community Church*, 47 Cal.3d 278, 292, 253 Cal.Rptr. 97 (1988). ([back to text](#))

8. *Id.* at 296 ([back to text](#))

9. 17 A.L.R.5th 179 (1994) ([back to text](#))

10. *Lucas v. City of Long Beach*, 60 Cal.App.3d 341, 131 Cal.Rptr. 470 (1976). ([back to text](#))

11. 390 F.Supp. 976 (N.D.Ga. 1975). ([back to text](#))

12. Cal. Gov't Code ♦ 835(a). ([back to text](#))

13. California Court of Appeals, First Appellate District, Division One, Docket # A068103, September 25, 1995. ([back to text](#))

14. Unpublished opinions are not binding in subsequent cases, and cannot be cited as precedent in submissions to a court. ([back to text](#))

15. 51 Cal.App.3d 926, 939, 125 Cal.Rptr. 586 (1975). ([back to text](#))

16. *Fredette v. City of Long Beach*, 187 Cal.App.3d 122, 132, 231 Cal.Rptr. 598 (1986). ([back to text](#))

17. 6 Witkin, Summary of California Law, Torts, ♦868 (9th ed., 1996 supp.) (voluntary duty). ([back to text](#))

18. Restatement (Second) of Torts ♦ 323. California courts have sometimes cited the section approvingly, for example, in *Coffee v. McDonnell-Douglas Corp.* 8 Cal.3d 55, 105 Cal.Rptr. 358, 503 P.2d 1366 (1972). ([back to text](#))

19. 187 Cal.App.3d 122, 231 Cal.Rptr. 598 (1986). ([back to text](#))

20. *Id.* at 127-129. ([back to text](#))

21. *Id.* at 132, quoting *Curreri v. City of San Francisco*, 262 Cal.App.2d 603,612, 69 Cal.Rptr.20 (1968). ([back to text](#))

22. Cal. Gov't. Code ♦ 830.6. ([back to text](#))

23. *Grenier v. City of Irwindale*, 57 Cal.App.4th 931, 939-940, 67 Cal.Rptr.2d 454 (1997). ([back to text](#))

24. *Bay Area Rapid Transit District (BART) v. Superior Court (Etier)*, 46 Cal. App.4th 476, 481, 53 Cal. Rptr.2d 906 (1996), quoting *Compton v. City of Santee*, 12 Cal.App.4th 591, 596, 15 Cal. Rptr.2d 660 (1993). ([back to text](#))

25. *Grenier v. City of Irwindale*, 57 Cal.App.4th 931, 945, 67 Cal.Rptr.2d 454 (1997). ([back to text](#))

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