

THE ARGUMENT FOR WRONGFUL SUICIDE: IOWA’S NEED FOR A MORE COMPREHENSIVE APPROACH FOR LIABILITY IN SUICIDE CASES

ABSTRACT

Throughout the United States’ history, courts have struggled with and had to adjudicate cases revolving around suicide. The decision to end one’s own life is a difficult one, and often is the result of complex mental health conditions. These mental health conditions can sometimes be caused, or exacerbated, by the actions of other individuals. Under Iowa law, suicide is treated as an intentional act, despite the fact that modern doctors and psychologists have come to the opposite conclusion. Because Iowa courts treat suicide as an intentional act, those who negligently cause the suicide of another are completely absolved of liability. The purpose of this Note is to explain the current science examining depression and suicide, the statistics that make these issues particularly relevant to the state of Iowa, and then to propose an alternative to denying the families of suicide victims recovery by using common law principles.

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I. INTRODUCTION

Suicide and mental health are complicated subjects not only for the scientists who study them, but they have also presented unique problems for courts to wrestle with. Suicide arises in a multitude of situations and affects every demographic in the United States.¹ In response, courts have created special tests, causes of action, and rules when a case involves suicide.² Modern advances in neurological science and psychology have given us a better understanding of what happens within the brain of someone who has a mental health condition.³ With a clearer understanding of what effects mental health conditions such as depression, anxiety, or bipolar disorder have on the brain, some of the existing judicial constructions begin to appear antiquated.⁴

Iowa currently finds itself in a precarious position in regards to mental health and suicide.⁵ More and more Iowans every year are being diagnosed with severe depression and then committing suicide.⁶ What makes these increases more concerning is that in Iowa, the individuals aged 18 to 25 are having more serious thoughts of suicide than other midwestern states, and for some categories are rising even faster than the national average.⁷ Since more Iowans are diagnosed with and are struggling with depression and thoughts of suicide, Iowa courts will encounter more cases involving, or arising from, suicides.⁸ This increase then begs the question: How do Iowa courts handle suicide? One would hope that with this concerning statistical trend, Iowa would have a comprehensive approach to handling such cases if cases revolving around them are being brought to court. Even if this assumption is not true, the law should still reflect the current scientific

1. See *Suicide Statistics*, AM. FOUND. FOR SUICIDE PREVENTION, <https://afsp.org/suicide-statistics/> [<https://perma.cc/NW86-5ECV>] (May 19, 2023).

2. See, e.g., *Estate of Tedrow v. Standard Life Ins. Co. of Ind.*, 558 N.W.2d 195, 197 (Iowa 1997) (stating that the presumption against suicide is strong in life insurance disputes); *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 857 (Iowa 1993) (stating that workers' compensation benefits can be paid only when there is proof linking the deceased worker's "disturbed" mental state to the employer).

3. See *infra* Part II.A.

4. See *infra* Part II.A.

5. See *infra* Part II.B.

6. See 5 SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., BEHAVIORAL HEALTH BAROMETER: IOWA 15–16, 30–31 (Ctr. for Behav. Health Stat. & Quality 2019), <https://store.samhsa.gov/sites/default/files/d7/priv/iowa-bh-barometervolume5-sma19-baro-17-us.pdf> [<https://perma.cc/2Q82-XS7C>] [hereinafter BEHAVIORAL HEALTH BAROMETER].

7. *Id.* at 15–16.

8. See *id.*; *infra* Part II.B.

and medical understanding of these issues in order to ensure justice. Instead, the opposite is true.

Iowa's approach to liability for causing another's suicide is fractured amongst different areas of law.⁹ Cases brought under an intentional tort theory have a different test than cases brought under a negligence theory.¹⁰ Under a negligent infliction of emotional distress claim, for example, suicide is seen as an intentional, superseding act that severs all liability from a defendant.¹¹ Iowa courts have held suicide as a superseding cause despite the fact that "[a]ll suicides act under the pressure of unconscious forces and are, psychiatrically speaking, no more or less responsible for the act than is a person for having cancer."¹²

The defenses available to litigants in cases involving suicide are inconsistent as well.¹³ For example, comparative fault can be raised as a defense in cases of medical malpractice where the care provider has custodial power over the decedent.¹⁴ Further, in workers' compensation cases, an employee bringing a claim must show that the mental injury "was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer."¹⁵ A fractured approach like this makes the law overly complicated, and each of these approaches to suicide has its own unique problems that seriously affect the administration of justice in Iowa.¹⁶

In order to appropriately handle cases involving suicide, Iowa courts and the Iowa legislature need to abandon the old tests and standards and adopt a new uniform approach—a new civil cause of action called "wrongful suicide." A wrongful suicide claim would be a claim that could be brought when a suicide occurs and would not have occurred but-for the acts or omissions of the

9. *See infra* Part III.

10. *See* Cutler v. Klass, Whicher & Mishne, 473 N.W.2d 178, 183 (Iowa 1991) (using an "extreme and outrageous conduct" test); *see also* Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000) (using the "suicide rule" treating suicide as a "deliberate, intentional and intervening act" to sever causation from the defendant).

11. *Jain*, 617 N.W.2d at 300.

12. *See id.*; Edmund Bergler, *Suicide: Psychoanalytic and Medicolegal Aspects*, 8 LA. L. REV. 504, 533 (1948) (emphasis removed).

13. *See infra* Part III.

14. *See* Mulhern v. Cath. Health Initiatives, 799 N.W.2d 104, 129 (Iowa 2011).

15. *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 859 (Iowa 1995).

16. *See infra* Part III.

defendant(s).¹⁷ Distinguishable from a claim for infliction of emotional distress, wrongful suicide would allow the families of a decedent to recover for the end of life costs they incurred, the emotional distress they suffered from the suicide, and would punish or deter people from encouraging others to commit suicide.¹⁸ Allowing for this type of claim will create more consistency for cases involving suicide. To reach this uniform approach, the suicide rule must be abandoned, the use of comparative fault must be abandoned, and the elements developed through common law should be incorporated to create a more balanced test.

Before analyzing cases and legal tests in depth, it is imperative to set the stage on why this is such an important issue. Severe depression is a complex condition and the data available about Iowans' mental health highlights the need for a change in the law.¹⁹ Understanding the science and Iowans' current mental health will demonstrate why the current rules are so flawed.

II. SEVERE DEPRESSION AND IOWA'S DECLINING MENTAL HEALTH

A. Severe Depression: An Overview

Views on suicide have evolved over time and continue to change as modern neuroscience and psychology develop.²⁰ Throughout much of human history, however, society viewed suicide as immoral and even sacrilegious.²¹ One of the Enlightenment's most prominent moral philosophers, Immanuel Kant, believed suicide was an immoral act.²² Kant argued that a man who commits suicide "sinks lower than the beasts" and one who merely attempts suicide has "discarded his humanity."²³ These negative attitudes towards suicide existed in Europe and

17. See *Womack v. Eldridge*, 210 S.E.2d 145, 148 (Va. 1974) (recognizing a cause of action for emotional distress even when defendant did not physically harm the plaintiff).

18. See *infra* Part III.A.

19. See *infra* Parts II.A, II.B.

20. See, e.g., Fei-Fei Zhang et al., *Brain Structure Alterations in Depression: Psychoradiological Evidence*, 24 CNS NEUROSCIENCE THERAPEUTICS 994, 1000 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6489983/> [<https://perma.cc/2M5D-BUVE>]; see Alex B. Long, *Abolishing the Suicide Rule*, 113 NW. U.L. REV. 767, 770 (2018).

21. See, e.g., *Job* 1:21 (King James) ("The lord gave, and the lord hath taken away."). This verse has been interpreted to mean suicide is sacrilegious because the giving and taking of life is solely within God's discretion. To infringe on those duties is to insult God. See John Potter, *Is Suicide the Unforgivable Sin? Understanding Suicide, Stigma, and Salvation Through Two Christian Perspectives*, 12 RELIGIONS 987, 988, 992–93 (2021).

22. See IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 43 (Cambridge Univ. Press 1991).

23. Paul Edwards, *Kant on Suicide*, 61 PHIL. 27, 27 (2007).

helped shape U.S. attitudes and laws.²⁴ Early in U.S. history, committing, or even attempting, suicide was a crime.²⁵ Following this antiquated attitude, it is easy to define suicide as intentional as some modern courts still do to this day.²⁶

Modern societal views about suicide are much more comprehensive than simply labeling the condition as immoral or just “feeling sad” as earlier generations believed.²⁷ Severe depression, also referred to as Major Depressive Disorder (MDD), can come with a wide variety of observable symptoms in those who suffer from it.²⁸ Individuals suffering from depression report symptoms including trouble thinking, difficulty concentrating, back pain, headaches, slowed speaking and body movements, and reduced appetite.²⁹ These symptoms are sensations and changes in bodily functions, but there are also symptoms that directly affect a person’s mental state as well.³⁰ People with severe depression regularly report feelings of anxiousness, emptiness, sadness, hopelessness, tiredness, worthlessness, and experience frequent or recurring thoughts of death.³¹ Clearly, depression places more pain and physical burdens on a person than if they were just really sad.³²

Along with the symptoms that an individual can experience and recount, changes in the brain of someone who has been diagnosed with depression can be observed as well.³³ In recent years, Magnetic Resonance Imaging (MRI) technology has been used to study and identify changes in brain patterns resulting from severe depression.³⁴ Severe depression has been found to alter many parts of the brain including the frontal lobe, parietal lobes, and the prefrontal cortex.³⁵

24. See Long, *supra* note 20, at 772–82.

25. *In re Joseph G.*, 667 P.2d 1176, 1178 (Cal. 1983).

26. See *Jain v. State*, 617 N.W.2d 293, 300 (Iowa 2000).

27. See *Depression (Major Depressive Disorder)*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007> [<https://perma.cc/9EGL-DHSR>] (Oct. 14, 2022).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See Michael Tanenbaum, *Andrew Tate Tweets on Depression Provoke Heavy Backlash, Debate*, PHILLYVOICE (Sept. 10, 2017), <https://www.phillyvoice.com/andrew-tate-tweets-depression-provoke-heavy-backlash-debate/> [<https://perma.cc/64EP-77CA>].

33. Zhang et al., *supra* note 20, at 994–95.

34. *Id.*

35. *Id.*

These parts of the brain perform the important functions of sensory perception, understanding language, recalling memories, and more.³⁶

Human brains are vastly complex and different brain regions connect with each other to form complex brain networks.³⁷ If one region of the brain is affected by something, this could have consequences for other parts of the brain as well.³⁸ Some neuro-scientists believe when these networks are impaired, this damage can lead to severe depression.³⁹ Other theories for causes of depression include hormonal imbalances or inherited genetic traits.⁴⁰

Because much is still being discovered about depression, its causes, and how depression can lead to suicide, suicides are difficult to predict.⁴¹ Some researchers have tried to study the likelihood of suicide based on which anti-depressants a suicide victim took since different medications affect different parts of the brain.⁴² Studies have revealed that “the clinical data do[es] not fall into such neat categories Major depressive disorder is likely to have a number of causes.”⁴³ Other researchers have tried to predict suicide using factors commonly associated with suicide such as sex, history of substance abuse, and past sexual abuse.⁴⁴ None of these factors proved to be statistically significant in predicting suicide attempts, however.⁴⁵

It is important to recognize that severe depression often does not appear as the sole mental illness affecting an individual. According to data from BlueCross BlueShield, about 85 percent of individuals with major depression have at least

36. *Brain Anatomy and How the Brain Works*, JOHNS HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/anatomy-of-the-brain> [<https://perma.cc/W3RX-2W5T>].

37. Zhang et al., *supra* note 20, at 995.

38. See generally Steven L. Bressler & Vinod Menon, *Large-Scale Brain Networks in Cognition: Emerging Methods and Principles*, 14 *TRENDS COGNITIVE SCIS.* 277, 282 (2010).

39. Wayne C. Drevets et al., *Brain Structural and Functional Abnormalities in Mood Disorders: Implications for Neurocircuitry Models of Depression*, 213 *BRAIN STRUCTURE & FUNCTION*, 93, 110 (2008), <https://link.springer.com/content/pdf/10.1007/s00429-008-0189-x.pdf> [<https://perma.cc/RB5W-68JB>].

40. *Depression (Major Depressive Disorder)*, *supra* note 27.

41. See R. H. Belmaker & Galila Agam, *Major Depressive Disorder*, 358 *NEW ENGL. J. MED.* 55, 65 (2008).

42. *Id.*

43. *Id.*

44. Shirley Yen et al., *Personality Traits as Prospective Predictors of Suicide Attempts*, 120 *ACTA PSYCHIATRICA SCANDINAVIA* 222, 222 (2009).

45. *Id.*

one additional mental or physical health condition.⁴⁶ Looking at the opposite end of that spectrum, only 15 percent of individuals with severe depression do not get diagnosed with an additional health condition and 11 percent are diagnosed with six or more additional health conditions.⁴⁷

In summary, depression and suicide can arise out of a number of potential causes, almost all of which are outside of an individual's control.⁴⁸ Because of the numerous possible causes, predicting who will commit suicide and when they will do it has proved difficult.⁴⁹ Severe depression can result in multiple severe side effects, most notably, decision making and perception functions.⁵⁰ Because these crucial mental functions are impaired, it seems wrong to define suicide as an "intentional act" as many jurisdictions still do.⁵¹

B. Concerning Trends Within the Hawkeye State

Iowa, as a state, struggles with providing adequate care for mental health, and the problem has only been getting worse. Compared to other midwestern states, statistical trends show that Iowa has seen a faster growth rate in young adults for the prevalence of depression and suicides.⁵² Individual Iowans personally struggle with these conditions and many Iowa care facilities do not currently provide the level of care that Iowans need.⁵³

From 2000 to 2022 the number of suicides per year in Iowa has nearly doubled.⁵⁴ In 2000, 286 Iowans committed suicide, and in 2022, 580 Iowans

46. *Major Depression: The Impact on Overall Health*, BLUECROSS BLUESHIELD (May 10, 2018), <https://www.bcbs.com/the-health-of-america/reports/major-depression-the-impact-overall-health> [<https://perma.cc/7JSM-J7K4>].

47. *Id.*

48. *See* Belmaker & Agam, *supra* note 41, at 55.

49. *See id.*

50. *Depression (Major Depressive Disorder)*, *supra* note 27.

51. *See, e.g.,* Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000).

52. BEHAVIORAL HEALTH BAROMETER, *supra* note 6, at 15.

53. *See* Ally Pronina, *We Can Reduce Deaths from Suicide, but It Will Take Investment*, DES MOINES REG., <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2023/09/21/suicide-prevention-awareness-public-investment-needs/70912741007/> [<https://perma.cc/KC95-86G4>] (Sept. 21, 2023, 6:15 AM).

54. *Time Trends*, IOWA DEP'T OF PUB. HEALTH, https://data.idph.state.ia.us/t/IDPH-DataViz/views/SuicideV3/TimeTrends?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no&%3Arender=false [<https://perma.cc/Z87F-V5R5>].

committed suicide.⁵⁵ This trend is not reflected precisely at the county level, nor has the increase in suicide been seen in any one demographic (such as teen suicide).⁵⁶ Still, the fact that nearly 600 Iowans a year commit suicide is a major cause for concern.

Iowa's large rural population is relevant to these problematic trends. Iowa's rural population totals about 1,175,538 citizens which equates to 36.8 percent of the state's total population.⁵⁷ According to data from the Center for Disease Control (CDC), the suicide rate was 55 percent higher, per-capita, in rural areas than in urban areas from 2013 to 2015.⁵⁸ There are several reasons that rural populations see more suicides per-capita compared to urban areas. Rural residents often have less access to quality mental health care, do not have enough mental health providers in their area, and have the social stigma of seeking mental health care in smaller communities.⁵⁹

Even if Iowans seek mental health care despite the social stigma, the quality of care can often leave much to be desired for. Out of all 50 states, Iowa ranks 47th for the percentage of practicing psychiatrists that are licensed to provide care.⁶⁰ This means that when Iowans with mental health conditions seek treatment, they might struggle to find access to qualified professionals.⁶¹

An analysis of mental health in Iowa would be incomplete without briefly mentioning the COVID-19 pandemic and the harms it has caused. COVID-19 not only causes respiratory issues and flu-like symptoms, but many who recover from

55. *Id.*

56. *See id.*

57. *Urban and Rural Population: Census 2020*, STATE DATA CTR., <https://www.iowadatacenter.org/index.php/data-by-source/decennial-census/urban-and-rural-population> [https://perma.cc/3LX9-P69Q].

58. Asha Z. Ivey-Stephenson et al., *Suicide Trends Among and Within Urbanization Levels by Sex, Race/Ethnicity, Age Group, and Mechanism of Death — United States, 2001–2015*, CDC: MORBIDITY & MORTALITY WKLY. REP. (Oct. 6, 2017), <https://www.cdc.gov/mmwr/volumes/66/ss/ss6618a1.htm> [https://perma.cc/BAQ9-R6PV].

59. *Rural Mental Health*, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/topics/mental-health> [https://perma.cc/3QL5-P5N2] (Jan. 30, 2024).

60. IOWA HOSP. ASS'N, *ISSUE REVIEW OF BEHAVIORAL HEALTH CARE ACCESS FOR IOWANS 1* (Iowa Leg. 2005), <https://www.legis.iowa.gov/docs/publications/SD/87.pdf> [https://perma.cc/SUL2-AGVM].

61. Tom Barton, *Lacking in Iowa's Attempt to Add Psychiatrists: Trainers*, THE GAZETTE (Jan. 29, 2024, 3:16 PM), <https://www.thegazette.com/state-government/lacking-in-iowa-attempt-to-add-psychiatrists-trainers/> [https://perma.cc/N48T-ABPA].

COVID-19 report feeling depressed months after recovery.⁶² At four months post-infection, 52 percent of COVID-19 patients met the criteria for severe depression.⁶³ Not only did the lockdowns associated with COVID cause increased rates of depression, but they also prevented many mental health patients from accessing the care they need.⁶⁴ Like the other causes of depression discussed previously, the pandemic and the societal shutdowns that came with it are forces entirely out of the control of the people who developed mental health conditions.

In short, Iowa is seeing more people with mental health conditions, such as depression, and the state's suicide rate has been on a steady incline for 20 years.⁶⁵ The COVID-19 pandemic has exacerbated this, and the data that will be collected following the pandemic will likely show rates of depression and suicide higher than ever before.⁶⁶ As depression and suicide become more prevalent, it is reasonable to assume that there will be more cases filed involving or arising from a suicide. In some cases, people can act in such a way to encourage or lead a person who has severe depression to commit suicide which can lead to litigation.⁶⁷ Whatever tragic circumstances bring a suicide case into the judicial system, Iowa courts should be well-equipped to handle these cases.

III. IOWA'S FRACTURED APPROACH TO SUICIDE

Iowa courts do not approach liability for suicide similarly across various areas of the law. While some prefer a variety of legal tests to better accommodate different factual scenarios, this is a subject that could benefit from consistency and

62. See Peter Roy-Byrne, *Mental Health Aftermath of Covid-19: Long-Hauler Depression?*, NEJM J. WATCH (March 23, 2021), <https://www.jwatch.org/na53348/2021/03/23/mental-health-aftermath-covid-19-long-hauler-depression> [https://perma.cc/9JDA-NLYU].

63. *Id.*

64. See Arehally M. Mahalakshmi et al., *Does Covid-19 Contribute to Development of Neurological Disease?*, 9 IMMUNITY, INFLAMMATION, DISEASE 48, 53–54 (2021); see also Nirmita Panchal et al., *The Implications of COVID-19 for Mental Health and Substance Use*, KFF, <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/> [https://perma.cc/38VR-4JS9] (Mar. 20, 2023).

65. See *Time Trends*, *supra* note 54.

66. See Olivier Renaud-Charest et al., *Onset and Frequency of Depression in Post-COVID-19 Syndrome: A Systematic Review*, 144 J. PSYCHIATRIC RSCH. 129, 135 (2021) (concluding that “a high frequency of clinically-significant depression and depressive symptoms [are] associated with post-COVID-19 syndrome”).

67. See, e.g., *Doe v. Doe*, 67 N.E.3d 520, 525–26 (Ill. App. Ct. 2016) (ruling that a defendant was not liable even when defendant “knew that the decedent was suicidal and deliberately encouraged her to take her own life . . .”).

predictability. This Part will detail these different approaches and the cases that govern them. Some areas of law are simpler than others in Iowa, but when analyzing depression, suicide, and mental health in general, there is one obvious, closely related, claim to start with: intention infliction of emotional distress.⁶⁸

A. *Intentional Infliction of Emotional Distress*

Intentional infliction of emotional distress is a tort closely linked with suicide.⁶⁹ This cause of action serves the purposes of protecting one's mental state of mind and punishing those who create such a distressed mental state.⁷⁰ Despite this close relationship, there are not many reported Iowa cases where a claim was brought seeking damages for an intentional infliction of emotional distress claim that resulted in a suicide.

One such case, however, is *Cutler v. Klass, Whicher & Mishne*.⁷¹ In *Cutler*, the Iowa Supreme Court articulated the basic elements of an intentional infliction of emotional distress claim.⁷² The court stated that:

The elements of such recovery are: (1) outrageous conduct by the defendant; (2) the defendant's intentional causing, or reckless disregard of the probability of causing emotional distress; (3) plaintiff suffered severe or extreme emotional distress; [and] (4) actual and proximate cause of the emotional distress by the defendant's outrageous conduct.⁷³

This formulation of the claim is fairly standard, and many states have similar language in their respective statutes and cases.⁷⁴

Element one of the tort serves an important gatekeeping function to keep out certain claims.⁷⁵ It is possible that someone may suffer emotional distress, but the

68. See *infra* Part III.A.

69. *Turcios v. DeBruler Co.*, 32 N.E.3d 1117, 1128 (Ill. 2015) ("We observe that intentional infliction of emotional distress, by its very nature, appears to have a slightly closer connection to suicide than other intentional torts.").

70. See *M.H. ex rel. Callahan v. State*, 385 N.W.2d 533, 539 (Iowa 1986).

71. 473 N.W.2d 178 (Iowa 1991).

72. *Id.* at 183.

73. *Id.*

74. See RESTATEMENT (SECOND) OF TORTS § 46 (AM. L. INST. 1965); Neal Baroody, Casenote, *Hamilton v. Ford Motor Credit Co.*, 66 *Md. App.* 46, 502 A.2d 1057, cert. denied, 306 *Md.* 118, 507 A.2d 631 (1986), 16 U. BALT. SCH. LAW 154, 156 n.22 (1986) (noting a majority of states have adopted the Restatement (Second) of Torts).

75. See *Cutler*, 473 N.W.2d at 183.

conduct by the person who caused it was relatively innocuous.⁷⁶ In such cases, it makes sense that courts would not want to punish someone for conduct that in any other situation would have been harmless.⁷⁷ In fact, this was the rationale that the court used in *Cutler*.⁷⁸

In *Cutler*, the decedent, Mr. Daniel Cutler, was an attorney who was suffering from mental health issues.⁷⁹ After completing his mental health treatment, Mr. Cutler's partners at the law firm sent him a letter stating that Mr. Cutler's partnership at the firm would be under review due to his inconsistent attendance.⁸⁰ Shortly after the letter was delivered to Mr. Cutler, he committed suicide—his body was found with the letter on his person.⁸¹

What *Cutler* demonstrates is that courts are sympathetic to families who lose a loved one to suicide, but ultimately cannot award damages for conduct that does not reach the level of extreme and outrageous.⁸² It is unfortunate that Mr. Cutler's family did not receive any compensation for their sudden loss, which they argued would not have happened without the defendant's conduct.⁸³ But, in order to avoid frivolous claims, this is the correct outcome. One may argue that Cutler's partners at the law firm could have handled the situation differently since they were aware of his struggles with mental health; however, nothing in the content of the letter seemed to exploit Mr. Cutler's condition in a way to cause mental distress.⁸⁴

Requiring extreme and outrageous conduct in order to recover damages strikes the appropriate balance for allowing some claims into court and preventing

76. See *Spiers v. Oak Grove Credit, LLC*, 328 So.3d 645, 653–54 (Miss. 2021) (holding that a supervisor calling their employee's pregnancy a disease did not pass the "tall order" of extreme and outrageous).

77. See *Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 28 (Iowa 2014) (stating that the district court properly performed its gatekeeping function when ruling in favor of defendant's motion for summary judgement).

78. *Cutler*, 473 N.W.2d at 184.

79. *Id.* at 179–80.

80. *Id.* at 180.

81. *Id.*

82. *Id.* at 183–84.

83. Along with non-economic damages for emotional distress, there are significant economic costs following the death of a loved one. Iowa funeral costs average at about \$7,000, and other end of life expenses could cause families to incur up to \$12,000 of costs that they otherwise would not have incurred at that time. Alani Asis & Julia Kagan, *How Much Does a Funeral Cost?*, POLICYGENIUS, <https://www.policygenius.com/life-insurance/how-much-does-a-funeral-cost/> [<https://perma.cc/UC4F-2TZT>] (June 14, 2023).

84. See *Cutler*, 473 N.W.2d at 180–82.

others.⁸⁵ While the burden on plaintiffs may be high to prove conduct was extreme and outrageous, courts do not examine these claims “in a sterile setting, detached from the surroundings in which it occurred.”⁸⁶ Iowa courts follow the long-established common law rules for claims of intentional infliction of emotional distress.⁸⁷ Under claims for *negligent* infliction of emotional distress, however, Iowa courts employ a different standard.⁸⁸

B. Suicide Claims Brought Under a Negligence Theory

Iowa courts rarely allow cases seeking damages for suicide under a negligence theory to make it past the summary judgement stage.⁸⁹ This is because suicide is seen as an intentional act that supersedes the actions of the defendant.⁹⁰ This approach to liability for suicide has been dubbed the “suicide rule” by some courts and commentators.⁹¹

1. Current Iowa Case Law

An Iowa case that concisely states the suicide rule is *Jain v. State*, a case where a father sued the university his son attended because he believed the university did not exercise reasonable care to prevent his son’s suicide.⁹² One of the key facts motivating the lawsuit was the fact that Sanjay Jain, the decedent, committed suicide in a university-owned dorm room.⁹³ The Iowa Supreme Court recognized that there are exceptions to the suicide rule, and that certain “special relationships” impose a duty to prevent suicide.⁹⁴

Special relationships are typically custodial in nature, which means the defendant has some degree of custody or control over the suicide victim.⁹⁵ Classic

85. Long, *supra* note 20, at 823–24.

86. Harris v. Jones, 380 A.2d 611, 615 (Md. 1977).

87. See Cutler, 473 N.W.2d at 183.

88. *Id.* at 182–83.

89. See, e.g., M.H. *ex rel.* Callahan v. State, 385 N.W.2d 533, 535–36 (Iowa 1986) (granting Defendant’s motion for summary judgement based on Iowa precedent).

90. Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000); see also Scheffer v. R.R. Co., 105 U.S. 249, 250 (1881) (“[T]he relation of such negligence was too remote as a cause of the death to justify recovery, the proximate cause being the suicide of the decedent, his death by his own immediate act.”).

91. Long, *supra* note 20, at 783–84 (citing Johnson v. Wal-Mart Stores, Inc., 588 F.3d 439, 440 (7th Cir. 2009)).

92. Jain, 617 N.W.2d at 296.

93. *Id.*

94. *Id.* at 297.

95. *Id.*

examples of special relationships where the duty to prevent suicide is imposed are seen in hospitals and jails; for varying reasons, a person's freedom is restricted in these relationships, so the custodial party bears responsibility over injuries that occur.⁹⁶ The Iowa Supreme Court declined to accept the existence of a special relationship in the student-university relationship, even if the student lived in and committed suicide in university housing.⁹⁷ Another relationship where the Iowa Supreme Court chose not to recognize a special relationship was the relationship between a retailer and a consumer.⁹⁸ Cases with these sorts of detached, non-custodial relationships do not impute liability upon a defendant in the same way a caregiver-patient relationship does.⁹⁹

2. Problems with Iowa's Current Rule

Generally speaking, the suicide rule makes deciding suicide cases easy for courts.¹⁰⁰ It is a mechanical approach where judges need only determine if a special relationship existed, and if one did not exist, the negligence claim is dismissed.¹⁰¹

As discussed in Part I, depression affects people in multiple ways.¹⁰² Some of the most impaired brain functions resulting from depression are the critical thinking and sensory perception functions.¹⁰³ So how can courts look at someone who was under the effect of unconscious forces outside of their control, and say their suicide was intentional? Even if the suicide rule has existed for many years, the rationale behind it directly conflicts with what modern science tells us about depression and suicide.¹⁰⁴

It may be true that the special relationship exceptions help ameliorate the problem by allowing some suicide cases into court, but the exception is too narrow in its scope.¹⁰⁵ One case that puts the rigidity of the suicide rule on full display is *Doe v. Doe*.¹⁰⁶ And while *Doe* is an Iowa case, it is instructive because it was

96. See *Nally v. Grace Cmty. Church of the Valley*, 763 P.2d 948, 956 (Cal. 1988).

97. *Jain*, 617 N.W.2d at 296, 299–300; see also *Dzung Duy Nguyen v. Mass. Inst. of Tech.*, 96 N.E.3d 128, 146–49 (Mass. 2018).

98. See *Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 570–71 (Iowa 1997).

99. See RESTATEMENT (SECOND) OF TORTS § 314A (AM. L. INST. 1965).

100. See, e.g., *Jain*, 617 N.W.2d at 297–300.

101. See *id.* at 300.

102. See *supra* Part I.

103. *Depression (Major Depressive Disorder)*, *supra* note 27.

104. See *id.*

105. See generally *Doe v. Doe*, 67 N.E.3d 520 (Ill. App. Ct. 2016).

106. *Id.* at 525–26.

decided in a neighboring jurisdiction also employing the suicide rule.¹⁰⁷ Under current Iowa law, the same factual scenario could easily have occurred within Iowa, and Iowa courts would inevitably have reached the same tragic outcome as *Doe*.¹⁰⁸

In *Doe*, a minor developed severe depression and anxiety following social media communications with another minor child.¹⁰⁹ In these communications, defendant John Doe told the decedent that he was going to kill himself because he knew Jane Doe suffered from severe depression and indicated that the decedent should do so as well in a suicide pact.¹¹⁰ The decedent Jane Doe believed that defendant John Doe was serious about taking his own life and she became extremely distressed by this.¹¹¹ The depression and anxiety that developed was so severe that she followed defendant Doe's instructions and committed suicide.¹¹² What makes the facts of this case truly tragic is that defendant John Doe never intended to commit suicide nor was he actually depressed—facts that were known to other children at school and his parents.¹¹³ Ultimately, however, the court dismissed the case pursuant to the suicide rule.¹¹⁴

Under the suicide rule, there was clearly no special relationship between the two minors;¹¹⁵ one minor cannot have custody or control of another. Further, the complaint alleged negligent infliction of emotional distress as well as a negligent supervision claim against John Doe's parents.¹¹⁶ Interestingly, even if the complaint had alleged intentional infliction of emotional distress, the court seemed reluctant to allow the claim to move forward into trial.¹¹⁷ No matter how tragic these facts were, and how negligent the minor was in encouraging the suicide, the Illinois Court of Appeals held firm and stated:

The circumstances as pled in the plaintiff's complaint, even when supplemented with the additional assertion that John Doe II knew that the decedent was suicidal and deliberately encouraged her to take her own life,

107. *See id.*

108. *See Jain v. State*, 617 N.W.2d 293, 300 (Iowa 2000).

109. *Doe*, 67 N.E.3d at 523.

110. *Id.* at 522–23.

111. *Id.* at 523.

112. *Id.* at 522–23.

113. *Id.*

114. *Id.* at 525–26.

115. RESTATEMENT (SECOND) OF TORTS § 315 (AM. L. INST. 1965).

116. *Doe*, 67 N.E.3d at 523.

117. *Id.* (stating that “the injury suffered . . . must be the natural consequence” of the negligent or intentional act, and it cannot be a “remote consequence” of the act).

do not fall within either recognized exception to the general rule that a plaintiff may not recover for a decedent's suicide because suicide is an intervening act which breaks the chain of causation from a defendant's negligent conduct.¹¹⁸

What *Doe* shows more than anything, is that the suicide rule is as capable of keeping out meritorious claims that have negligence and extensive damages as much as it keeps out bad, non-meritorious claims.¹¹⁹ The defendant negligently engaged in reprehensible behavior and the family of the decedent lost a child much too soon.¹²⁰ Under the suicide rule though, the negligent behavior goes unpunished, and those who were harmed do not even get their day in court to face the individual who encouraged suicide.¹²¹ At least one jurisdiction has recognized school bullying as a unique exception where suicide may not automatically sever causation, but that exception is not the rule in Iowa.¹²²

Encouraging suicide is not the only negligent act that escapes liability under the suicide rule. Harassment from debt collectors, negligent firearms owners, and verbally abusive supervisors in the workplace all avoid liability due to the absence of a judicially recognized special relationship.¹²³ Workers' compensation claims that allege workers are forced to work in mentally harmful work conditions also face dismissal.¹²⁴ Under Iowa law, dismissal is often the only outcome for suicide cases brought under a negligence theory.¹²⁵

C. Suicide and Medical Malpractice

Prior to 2011, Iowa only allowed for recovery for suicide in medical malpractice cases where there was a custodial or special relationship.¹²⁶ This meant that a plaintiff could only recover for a suicide arising from negligence if a hospital

118. *Id.* at 525.

119. *See id.* at 525–26.

120. *See id.* at 522–23.

121. *See id.* at 526.

122. *Patton v. Bickford*, 529 S.W.3d 717, 729 (Ky. 2016).

123. *See, e.g., MacDermid v. Discover Fin. Servs.*, 488 F.3d 721, 736 (6th Cir. 2007) (debt collectors); *Johnstone v. City of Albuquerque*, 145 P.3d 76, 78–79 (N.M. Ct. App. 2006) (negligent firearm owners); *Halko v. N.J. Transit Rail Operations, Inc.*, 677 F. Supp. 135, 141–43 (S.D.N.Y. 1987) (verbally abusive supervisor).

124. *See Tripp v. Scott Emergency Commc'n Ctr.*, No. 5066673, 2020 WL 6829035, at *11 (Iowa Workers' Comp. Comm'n Nov. 17, 2020).

125. *See, e.g., Jain v. State*, 617 N.W.2d 293, 297–300 (Iowa 2000).

126. *See id.* at 300.

or care facility had control or custody over a decedent.¹²⁷ Custodial care means that a patient was in the care of a facility and needed custodial services like aid using the restroom, bathing, and constant monitoring.¹²⁸ This well-understood approach changed when the Iowa Supreme Court decided *Mulhern v. Catholic Health Initiatives*.¹²⁹ Instead of finding that there was no defendant liability where there is no special relationship, the court found that a suicide itself may constitute a negligent act.¹³⁰

1. *Mulhern and the Case of Non-Custodial Suicide*

In *Mulhern*, the decedent, Elizabeth Von Linden, had a long history of depression and suicide attempts.¹³¹ Von Linden had attempted suicide on June 6, 2003, because of financial and work-related stress.¹³² She was a successful business woman in charge of consumer marketing at a large media company, but this put all of the financial stress on her as the “primary breadwinner” in her marriage.¹³³ Following her June 6 suicide attempt, Von Linden was taken to an emergency room, and soon after was transferred to the psychiatric ward.¹³⁴ Von Linden expressed great regret for attempting suicide and was prescribed medication.¹³⁵ Upon her release and subsequent visits to her psychiatrist, she was deemed healthy enough to be released without supervision by June 23.¹³⁶ Just six days later, Von Linden committed suicide by hanging herself at home.¹³⁷

Suicide cases can be complex, but what made this case difficult for the court was the fact that the decedent was not in the custodial care of the defendant when she committed suicide—she had been released and committed suicide at home.¹³⁸ This makes the issue of the defendant’s negligence less obvious since the defendant did not have direct control over the decedent when she committed

127. See *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 182 (Iowa 1991).

128. See *Kastler v. Iowa Methodist Hosp.*, 193 N.W.2d 98, 101–02 (Iowa 1971) (distinguishing routine hospital services, like bathing, and professional services, like surgery, in deciding hospital liability).

129. 799 N.W.2d 104 (Iowa 2011).

130. *Id.* at 114. The lawsuit was brought by the decedent’s husband, Todd Mulhern, whose last name the decedent did not adopt in marriage. *Id.* at 106.

131. *Id.* at 107.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 108.

136. *Id.* at 108–09.

137. *Id.* at 109.

138. See *id.* at 112.

suicide.¹³⁹ However, the very reason Von Linden was in the defendant's care in the first place was for attempting suicide.¹⁴⁰ The plaintiff's theory of the case was that the defendant breached their duty of care by discharging Von Linden preemptively, knowing that she was prone to suicide.¹⁴¹ If a patient is mentally unwell, a care provider should not take their words of recovery as fact, especially when the patient has a history of sudden suicidal thoughts.¹⁴² Conversely, the defendant's theory was that Von Linden herself was contributorily negligent by committing suicide.¹⁴³

At the trial court level, the judge allowed comparative fault to be raised as a defense, and the jury found Von Linden 90 percent at fault for her suicide.¹⁴⁴ Once the case reached the Iowa Supreme Court, the main issue to be decided was whether suicide constitutes an act of negligence, that could potentially reduce recovery, within the meaning of the Iowa Comparative Fault Act.¹⁴⁵ Justice Thomas Waterman, writing for the majority, stated that suicide can count as negligence, and further stated that a majority of state "courts have reached divergent conclusions on how to allocate legal responsibility for suicide . . . victims."¹⁴⁶ Instead of relying on Iowa law or the language of the Iowa Comparative Fault Act, the majority cited to several cases decided in jurisdictions with similarly written statutes.¹⁴⁷ Justice Brent Appel dissented on the grounds that suicide is not consistent within the meaning of the statute and because the majority decision was inconsistent with itself.¹⁴⁸ It is also worth noting that just eight years prior to *Mulhern*, the Iowa Supreme Court held that comparative fault is *inapplicable* when a patient's conduct provides the occasion for care.¹⁴⁹ For example, if a patient was negligent and then injured by jumping off of a roof at party, a care provider cannot raise comparative fault as a defense for malpractice

139. *Id.* at 129.

140. *Id.* at 107.

141. *Id.* at 106–09.

142. *See id.* at 107–08.

143. *Id.* at 106.

144. *Id.*

145. *Id.* at 110–12 (citing IOWA CODE § 668.1 (2003)).

146. *Id.* at 107.

147. *Id.* at 115; *see* *Gregoire v. City of Oak Harbor*, 244 P.3d 924, 954–55 (Wash. 2010) (holding that a suicide victim may be assigned a percentage of fault); *see also* *Sheron v. Lutheran Med. Ctr.*, 18 P.3d 796, 801 (Colo. App. 2000) (holding that patients with suicidal ideations may be found comparatively negligent).

148. *Mulhern*, 799 N.W.2d at 130–31 (Appel, J., dissenting).

149. *Wolbers v. Finley Hosp.*, 673 N.W.2d 728, 732 (Iowa 2003).

that occurs in treating those injuries.¹⁵⁰ In such a case, the negligence brought the patient to the hospital, but it did not create a malpractice injury. If the court expanded that ruling in *Mulhern*, comparative fault might not have been a defense available to the defendant.¹⁵¹ Instead, the court held that the jury is permitted to compare the negligence of a suicide victim with the negligence of their care provider who had the duty to prevent the decedent's suicide in the first place.¹⁵² Medical care providers and even psychologists must take precautions to prevent patient self-harm.¹⁵³

2. Comparative Fault—Victim Blaming Disguised in Legalese

Throughout the majority opinion in *Mulhern*, the court cites to cases in an attempt to demonstrate that it understands what a suicidal person struggles with.¹⁵⁴ But the holding that a suicide victim can be assigned legal fault does more harm to suicidal individuals and their families than perhaps the court realized.¹⁵⁵ As discussed in Part II, suicide can arise from severe depression, but the choice to take one's own life is not a wholly conscious decision made by a rational person.¹⁵⁶

Under Iowa law, fault is defined as “one or more acts or omissions that are in any measure negligent or reckless . . . that subject a person to strict tort liability.”¹⁵⁷ Aside from the final act of suicide, someone with major depression does not take actions or make omissions, they simply deal with the day-to-day struggle of their condition.¹⁵⁸ To look at a now deceased person, and label their suicide as negligent (as the *Mulhern* court did), is tantamount to victim blaming.¹⁵⁹ Victim blaming is the “phenomenon in which victims of crimes or tragedies are held accountable for what happened to them. Victim blaming allows people to

150. *See id.*

151. *See id.*; *Mulhern*, 799 N.W.2d at 119.

152. *See Mulhern*, 799 N.W.2d at 119.

153. *See Winger v. Franciscan Med. Ctr.*, 701 N.E.2d 813, 820 (Ill. App. Ct. 1998).

154. *See, e.g., Mulhern*, 799 N.W.2d at 112 (citing *Maunz v. Perales*, 76 P.3d 1027, 1035 (Kan. 2003)) (holding juries may consider the diminished mental capacity of a suicide victim when evaluating comparative fault).

155. *See id.* at 123.

156. *See supra* Part II; Victor E. Schwartz, *Civil Liability for Causing Suicide: A Synthesis of Law and Psychiatry*, 24 VAND. L. REV. 217, 255 (1971) (“[A] person who commits suicide is not a blameworthy person and should not be regarded as such.”).

157. IOWA CODE § 668.1 (2023).

158. *See supra* Part II.

159. *See, e.g., Mulhern*, 799 N.W.2d at 106.

believe that such events could never happen to them.”¹⁶⁰ Some psychologists believe that people engage in victim blaming to feel better about themselves because they are living their life the “right” way.¹⁶¹ This practice does little to remedy the underlying issues that were brought about by the tragic event of suicide, however.

Unlike Iowa, other jurisdictions recognize the important public policy consideration of not blaming a suicide victim for their own death.¹⁶² The Supreme Court of Kansas has stated, “[n]egligent tortfeasors should not be allowed to reduce their fault by the intentional fault of another that they had a duty to prevent.”¹⁶³ Louisiana courts have come to a similar conclusion as well.¹⁶⁴ The Supreme Judicial Court of Massachusetts also stated succinctly: “[T]here can be no comparative negligence where the defendant’s duty of care includes preventing the self-abusive or self-destructive acts that caused the plaintiff’s injury.”¹⁶⁵ Lastly, the plaintiffs in *Mulhern* cited to a case coming from the Tennessee Supreme Court which explicitly stated that comparative fault is not applicable, even in cases of non-custodial suicide.¹⁶⁶ Iowa could easily follow the lead of these jurisdictions.

160. Kendra Cherry, *Why do People Blame the Victim?*, VERYWELLMIND, <https://www.verywellmind.com/why-do-people-blame-the-victim-2795911> [https://perma.cc/T3AK-9KSB] (Nov. 29, 2023). Victim blaming is often seen in cases of sexual assault, but can apply to victims of crimes and those who suffer tragic events like suicide. *See id.*

161. Kayleigh Roberts, *The Psychology of Victim Blaming*, THE ATL. (Oct. 5, 2016), <https://www.theatlantic.com/science/archive/2016/10/the-psychology-of-victim-blaming/502661/>.

162. *See, e.g.,* Cowan v. Doering, 545 A.2d 159, 164–65 (N.J. 1988) (“[T]he acts which plaintiff’s mental illness allegedly caused him to commit were the very acts which defendants had a duty to prevent, and these same acts cannot, as a matter of law, constitute contributory negligence.”).

163. Kan. State Bank & Trust Co. v. Specialized Transp. Servs., Inc., 819 P.2d 587, 606 (Kan. 1991).

164. *See* Veazey v. Elmwood Plantation Assocs., Ltd., 650 So. 2d 712, 719 (La. 1994) (citing Kan. State Bank & Trust Co., 819 P.2d at 606).

165. McNamara v. Honeyman, 546 N.E.2d 139, 146 (Mass. 1989).

166. *See* Mulhern v. Cath. Health Initiatives, 799 N.W.2d 104, 116 (Iowa 2011) (citing White v. Lawrence, 975 S.W.2d 525, 531–32 (Tenn. 1998)). Unfortunately, the *Mulhern* court found this case unconvincing due to the fact that it relied on custodial suicide cases to decide a non-custodial case. *Id.* at 116–17.

Not all states have moved away from the outdated approach of victim blaming, however.¹⁶⁷ North Dakota, for example, still allows a mental health patient to be assigned fault under its comparative fault statute.¹⁶⁸ In allowing fault to be assigned, the North Dakota law did face fierce criticisms, including the aptly titled law review article, *Why Is It My Fault When I'm the One Who's Dead?*¹⁶⁹ Such criticisms for allowing comparative fault defenses suggest alternatives such as disallowing a suicide decedent from being assigned fault altogether or allowing recovery when the breach of a duty was a substantial factor in bringing about death.¹⁷⁰ These alternatives are moving in the right direction—away from assigning fault to a suicide victim. However, common law principles may be more useful in developing a more uniform approach to suicide than one might expect.

IV. USING OLD PRINCIPLES TO COMBAT NEW ISSUES

Many of the legal tests and “[j]udicial assumptions about suicide [were] developed at a time when expert knowledge of the subject was more limited than at present.”¹⁷¹ Judicial constructions are abandoned when they no longer work or apply to the current state of the world, even in spite of precedent and the principle of stare decisis.¹⁷² Notably, in criminal law, legal approaches dealing with mentally ill defendants and criminally instigating suicide have evolved steadily over time.¹⁷³ For example, the defense of the “irresistible impulse” was famously abandoned by

167. See, e.g., *Gardner v. Or. Health Scis. Univ.*, 450 P.3d 558, 560 (Or. Ct. App. 2019) (holding there is no rule “per se” against defenses of comparative fault involving outpatient suicide).

168. *Champagne v. United States*, 836 F. Supp. 684, 689 (D.N.D. 1992).

169. See generally Lisa A. Mecklenberg, Case Comment, *Champagne v. United States*, 513 N.W.2d 75 (N.D. 1994), 71 N.D. L. REV. 1105 (1995).

170. Allen C. Schlinsog, Jr., Comment, *The Suicidal Decedent: Culpable Wrongdoer, or Wrongfully Deceased?*, 24 J. MARSHALL L. REV. 463, 486–90 (1991).

171. Andrew S. Watson et al., *The Judicial Interpretation of Suicide*, 105 U. PA. L. REV. 391, 409 (1957).

172. See, e.g., *Wickard v. Filburn*, 317 U.S. 111 (1942) (abandoning the U.S. Supreme Court’s prior interpretation of the Commerce Clause to respond to The Great Depression); see also *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (overruling the doctrine of “separate but equal” in public schools).

173. See generally Carla Zavala, Comment, *Manslaughter by Text: Is Encouraging Suicide Manslaughter?*, 47 SETON HALL L. REV. 297, 310–12 (2016) (discussing how prosecutors have pushed for instigating suicide to meet the definition of manslaughter in Massachusetts). See also Guyora Binder & Luis E. Chiesa, *The Puzzle of Inciting Suicide*, 56 AM. CRIM. L. REV. 65, 93–99 (2019) (discussing how Massachusetts, the same state listed previously, has expanded incitement of suicide to be homicide in certain circumstances).

Congress and a majority of states after the attempted assassination of President Ronald Reagan in 1981.¹⁷⁴

Perhaps criminal law has evolved while civil law has not because individual freedom is at stake in criminal cases. Our civil justice system also serves an important purpose though: to compensate those who have been wronged by others.¹⁷⁵ Civil law also aims to deter truly heinous conduct by allowing plaintiffs to recover punitive damages in certain circumstances.¹⁷⁶ Punitive damages should not be barred from wrongful suicide claims. If these potentially large damages are made available, the approach Iowa adopts going forward must achieve two important goals: gatekeeping weak claims and allowing meritorious claims to recover. Common law principles are instructive in this area, because, like criminal law, the common law evolved steadily over time.¹⁷⁷ Elements that have remained essential in claims have done so because, put simply, they work. The wrongful suicide cause of action would be a more uniform approach inspired by common law and will achieve both of these goals.

A. Common Law Elements: Extreme and Outrageous

It is no mystery why courts are reluctant to impose liability for suicide. Generally, there is a refusal to impose a duty to protect another from harm and the negative societal views towards suicide have prevented the recognition of this duty.¹⁷⁸ For those that view suicide as immoral, the last thing they would want to do is financially compensate someone for acting immorally.¹⁷⁹

As time has passed, and our understanding about mental illness has improved, states have started to abandon the suicide rule against liability.¹⁸⁰ In order to recognize this conduct as tortious, the state of Virginia has developed the following elements to determine when liability is appropriate:

174. See Insanity Defense Reform Act of 1984, 18 U.S.C. § 17; see also *From Daniel M'Naughten to John Hinckley; A Brief History of the Insanity Defense*, PBS: FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/crime/trial/history.html> [<https://perma.cc/M5NT-XWH2>].

175. See RESTATEMENT (SECOND) OF TORTS §§ 5–7 (AM. L. INST. 1965).

176. *Ryan v. Arneson*, 422 N.W.2d 491, 496 (Iowa 1988).

177. See Oona A. Hathaway, *Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System*, 86 IOWA L. REV. 601, 602–06 (2001).

178. *Logarta v. Gustafson*, 998 F. Supp. 998, 1000–01 (E.D. Wis. 1998).

179. See *id.*

180. See, e.g., *Womack v. Eldridge*, 210 S.E.2d 145, 147 (Va. 1974).

One, the wrongdoer's conduct was *intentional or reckless*. This element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result. Two, the conduct was *outrageous and intolerable* in that it offends against the generally accepted standards of decency and morality. This requirement is aimed at limiting frivolous suits and avoiding litigation in situations where only bad manners and mere hurt feelings are involved. Three, there was a *causal connection* between the wrongdoer's conduct and the emotional distress. Four, *the emotional distress was severe*.¹⁸¹

These factors are essentially a combination of negligence elements with the elements of intentional infliction of emotional distress.¹⁸² Notably, there are two elements that serve to keep out frivolous claims.¹⁸³ Requiring the defendant's conduct be "outrageous" and "intolerable" protects innocent behavior from liability.¹⁸⁴ In Virginia, courts have been clear that outrageous behavior is a high threshold, and even criminal behavior does not necessarily meet that standard.¹⁸⁵ Also, requiring the emotional distress to be severe is consistent with the purposes of the claim: to compensate for severe trauma and deter reckless behavior.¹⁸⁶

While it is clear that a plaintiff seeking to recover for a suicide has a high burden to meet, this is better than the alternative of no recovery under any circumstances. Those who have lost a loved one to suicide should at least have their day in court to face those who may have induced or allowed the suicide. Whether the conduct was extreme and whether the reckless behavior caused the suicide, are questions of fact for the jury.¹⁸⁷ Further, flat out denying recovery for suicide claims or blaming the victim are harmful messages for Iowa courts to send to a population that is more likely to be depressed and suicidal than ever before.¹⁸⁸ By adopting wrongful suicide as a claim, or recognizing elements similar to other

181. *Id.* at 148 (emphasis added).

182. *See id.*; RESTATEMENT (SECOND) OF TORTS §§ 46, 313 (AM. L. INST. 1965).

183. *See Womack*, 210 S.E.2d at 148; *Cocoli v. Child.'s World Learning Ctrs., Inc.*, Nos. (Law) 131183, (Law) 131184, 1994 WL 16035130, at *3 (Va. Cir. Dec. 28, 1994).

184. *See Cocoli*, 1994 WL 16035130, at *3 (refusing to extend *Womack* to a case where a toddler bit a teenager at a daycare center causing injury).

185. *Sirleaf v. Doe*, No. 7:21cv00237, 2021 WL 3362033, at *2 (W.D. Va. Aug. 3, 2021).

186. *McKinley v. Chi. & N.W.R. Co.*, 44 Iowa 314, 320–21 (1876) ("[M]ental anguish arising from the injury, that is, pain caused by the wound . . . constitutes an element of compensatory damages and we, on principle, are unable to see why mental pain arising from or caused by . . . the assault . . . should not also be an element of such damages.").

187. *See Womack*, 210 S.E.2d at 148.

188. *See Time Trends*, *supra* note 54.

states, “the number of potential claims should be fairly limited without having to resort to other, more awkward causation standards.”¹⁸⁹ Lastly, comparative fault should not be a defense available to defendants for the reasons discussed previously—it is inherently unjust to blame suicide decedents.¹⁹⁰ The next proposed change to Iowa’s current rules would aid judges and juries alike in navigating wrongful suicide cases.

B. Proving Suicide Resulted from Bad Conduct

Courts across the country are split and often separate civil suicide cases into two strict categories: intentional acts and negligent acts.¹⁹¹ In negligence cases, plaintiffs should be allowed to recover if suicide can be proven to be a direct result of the defendant’s negligence.¹⁹² Proving the bad act caused the suicide is a difficult task and has caused some courts to be skeptical of allowing these claims to recover under a negligence theory.¹⁹³ Severe depression is a complex medical condition; however, Iowa already has a requirement that forces litigants to prove causation concerning complex medical conditions and injuries—the requirement of an expert witness.¹⁹⁴ In Iowa, a *prima facie* case of medical negligence cannot be brought without supporting expert testimony.¹⁹⁵ In most cases, a decedent’s treating physician (or treating psychologist in these cases) will meet the required standards and be able to testify about causation.¹⁹⁶

Because suicide and the inner workings of the brain are so complicated, it makes sense to require plaintiffs to present expert testimony at an early stage in a case.¹⁹⁷ Some states, at times, require expert testimony for intentional tort cases that result in a suicide—even outside of the context of medical malpractice.¹⁹⁸ Most

189. Long, *supra* note 20, at 824.

190. See *supra* Part III.C.2.

191. Rowe v. Marder, 750 F. Supp. 718, 723 (W.D. Pa. 1990) (citing cases).

192. See Kivland v. Columbia Orthopaedic Grp., LLP, 331 S.W.3d 299, 313 (Mo. 2011).

193. See Patton v. Bickford, 529 S.W.3d 717, 737 (Ky. 2016) (finding that a plaintiff did not meet the burden of proving causation).

194. See IOWA CODE § 668.11 (1986) (requiring disclosure of an expert); see also IOWA CODE § 147.140 (2017) (requiring experts to provide a certificate of merit); Oswald v. LeGrand, 453 N.W.2d 634, 635 (Iowa 1990).

195. Kennis v. Mercy Hosp. Med. Ctr., 491 N.W.2d 161, 167–68 (Iowa 1992).

196. *Contra* Hansen v. Cent. Iowa Hosp. Corp., 686 N.W.2d 476, 480–81 (Iowa 2004).

197. See generally IOWA R. EVID. 5.702 (stating that experts may testify when specialized knowledge will assist the trier of fact in understanding the facts or evidence at issue).

198. Mayer v. Town of Hampton, 497 A.2d 1206, 1211 (N.H. 1985) (holding that “[p]roof of the substantial causation will usually be based on expert testimony”).

plaintiffs that bring suicide cases likely already want to use expert witness testimony, so requiring an expert is not a groundbreaking change.¹⁹⁹ Experts bolster the legitimacy of suicide cases, which will help courts move away from unjust and antiquated methods.

C. Prior Decisions as Wrongful Suicide Cases

With the new proposed cause of action requiring extreme and outrageous conduct, as well as severe emotional trauma, what changes? Not every case discussed thus far would have a different outcome. For example, *Cutler* would certainly reach the same end result whether it was a wrongful suicide claim or not.²⁰⁰ As the court stated, the letter that induced the severe emotional distress just simply was not outrageous.²⁰¹

In contrast, in a case like *Doe*, it seems likely that a plaintiff in similar circumstances could prevail.²⁰² Encouraging a minor, who one knows is depressed, to commit suicide is utterly outrageous conduct, even if the *Doe* court did not say as much.²⁰³ By virtue of the decedent's suicide, it seems fair to characterize the emotional distress suffered as extreme enough to satisfy that element. Someone whose brain is functioning properly would not consider suicide, let alone go through with committing it.²⁰⁴ No longer being restricted by the suicide rule, the families of severe bullying suicide victims could recover for the emotional pain they have suffered. Iowa courts should not have to wait for a child to be bullied into committing suicide to reach this conclusion.

By looking at decisions like *Doe*, it is clear the suicide rule is inherently unjust.²⁰⁵ In Iowa, one can recover for the emotional distress inflicted upon them, but should that distress result in suicide, suddenly plaintiffs have no case.²⁰⁶ Whether or not the parties in a suit had a special relationship should not determine recovery.²⁰⁷ It should be determined by the physical and emotional pain inflicted upon the decedent by a defendant's conduct.

199. *See id.*

200. *See Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 183–84 (Iowa 1991).

201. *Id.* at 183.

202. *See generally Doe v. Doe*, 67 N.E.3d 520 (Ill. App. Ct. 2016).

203. *See id.* at 525–26.

204. *See Zhang et al.*, *supra* note 20, at 994–95, 1000.

205. *Doe*, 67 N.E.3d at 525–26.

206. *See supra* Part III.A.

207. *See Jain v. State*, 617 N.W.2d 293, 297 (Iowa 2000).

Mulhern would certainly come out differently without the comparative fault defense.²⁰⁸ This does not mean the plaintiff would have succeeded; however, it would be up to the jury to determine whether or not preemptively discharging a suicidal patient, who was being treated for a suicide attempt, is extreme and outrageous.²⁰⁹ Based on the fact the jury found the decedent 90 percent at fault, this seems unlikely.²¹⁰ But a different jury in a different case may find otherwise. Such a case may be a battle of the experts, but comparative fault should not stand in the way of recovery anymore. If Iowa adopts wrongful suicide as a cognizable claim, comparative fault should be inapplicable as a defense.

D. Where Should Iowa Law Go Next?

Should reforms for mental health injuries in Iowa stop with suicide cases? Perhaps the law can evolve even further to allow recovery for more types of cases involving severe emotional distress. Under the proposed changes, nothing would bar a plaintiff from suing for emotional distress and then seeking damages for any corresponding self-harm not resulting in death.

There are few jurisdictions that allow for a plaintiff to recover for emotional distress and physical pain that occurred in a depressive episode.²¹¹ Acts like cutting oneself, burning oneself, or any injuries from a failed suicide attempt can all be caused by negligent conduct of another.²¹² Cases that allow for recovery for such harms have typically been under the custodial care relationship, however.²¹³

Proponents of the suicide rule, who view suicide as an intentional act, might see any proposed change to the status quo as a crazy idea. If someone chooses to slit their wrists, for example, why should anyone else be responsible for that choice? But, as discussed in Part II of this Note, someone who is suffering from severe depression is not experiencing the world as a healthy, rational person would

208. See *Mulhern v. Cath. Health Initiatives*, 799 N.W.2d 104, 123 (Iowa 2011); *supra* Part III.C.1.

209. See *Mulhern*, 799 N.W.2d at 121.

210. *Id.* at 106.

211. See generally *May v. Boehnlein*, No. 18-cv-1452, 2020 WL 5603429, at *14 (E.D. Wis. Sept. 18, 2020) (allowing the plaintiff to survive a motion for summary judgment because the court found that plaintiff's prison guard should have known they were prone to self-harm, and should have done more to prevent such self-harm from occurring). But see *Jessup v. Miami-Dade Cnty.*, 697 F. Supp. 2d 1312, 1320–21 (S.D. Fla. 2010) (holding jail officials were not liable when plaintiff did not display a "strong likelihood" for self-harm).

212. See, e.g., *May*, 2020 WL 5603429, at *10, *14.

213. See *Davis v. Harding*, No. 12-cv-559-wmc, 2014 WL 5454216, at *3 (W.D. Wis. Oct. 24, 2014).

be able to.²¹⁴ In that vulnerable state, outside stimuli and third-party behavior can induce self-harm. One of tort law's long-standing principles is that the defendant takes the plaintiff as they find them, so extending liability to those who induce non-lethal self-harm seems fair.²¹⁵ Iowa could be on the forefront of innovating civil liability for egregious conduct and shape its laws around what science is showing us.

V. CONCLUSION

Depression is rising across the nation and Iowa is no exception.²¹⁶ The rates of suicide and severe depression have been on a steady incline for the last 20 years, and the COVID-19 pandemic only added fuel to the fire.²¹⁷ Iowa's current approach to suicide is outdated and prevents the administration of justice. Even worse, negligent and reckless behavior is going unpunished. Iowa must move away from its outdated approach in deciding suicide claims in order to compensate those who have been wronged and to deter behavior that our state is better off without. Depression can affect any person at any time for a number of reasons seemingly at random, but that does not mean that our actions do not have consequences on those around us.²¹⁸ With that in mind, it is important for us to treat others with kindness and grace because we may never know what battles others are fighting.

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214. Zhang et al., *supra* note 20, at 994–95, 1000.

215. See, e.g., Bartolone v. Jeckovich, 103 A.D.2d 632, 634–35 (N.Y. App. Div. 1984).

216. See BEHAVIORAL HEALTH BAROMETER, *supra* note 6, at 15–16, 30–31.

217. See Roy-Byrne, *supra* note 62.

218. See Belmaker & Agam, *supra* note 41, at 65.

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