

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: CIVIL LIABILITY ISSUES 2.12

SUBJECT:	Civil Liability Issues
AZ POST DESIGNATION:	2.12
HOURS:	4
COURSE CONTENT: and placed	A review of civil and criminal liability facing law enforcement agencies officers. The concept of vicarious liability is discussed. Emphasis is on knowledge of federal civil rights violations, including 18 U.S.C. §§241 and 243 and 42 U.S.C. §1983.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: <ul style="list-style-type: none">2.12.1 Identify the following common causes of civil litigation against law enforcement officers and agencies:<ul style="list-style-type: none">A. False arrests.B. First aid.C. Excessive force.D. Vehicle collisions.E. Illegal search and seizure.F. Failure to protect.G. Workplace harassment.2.12.2 Identify examples of Direct and Vicarious (Agency) liability.2.12.3 Identify examples of when an officer may be subject to civil liability and/or criminal prosecution as per A.R.S. §28-624D and §13-201.2.12.4 Identify examples of civil rights violations as per 18 U.S.C. §§241 and 242 and 42 U.S.C. §1983.2.12.5 Identify the scope of criminal liability for civil rights violations per

18 U.S.C. §§241 and 242.

2.12.6 Identify the scope of civil rights violations as per 42 U.S.C. §1983.

DATE FIRST PREPARED: February 2001

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REVIEWED – REVISED:	AZ POST (Word)	DATE: April 2003
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AZ POST – APPROVAL:	Lori Wait	DATE: January 2022
AZ POST – APPROVAL:	Lori Wait	DATE: July 2022

INSTRUCTOR REFERENCES:

CLASS LEVEL: Student

TRAINING AIDS: Handouts: 18 U.S.C. §§241 and 242 and 42 U.S.C. §1983.
<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.12 Civil Liability Issues

DATE RELEASED TO THE SHARE FILE: July 19, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.
- C. Number of lawsuits being filed increases each day.
 - 1. Police agencies represent a “deep pocket.”
 - 2. The type of work performed by law enforcement officers lends itself to claims of constitutional violations. **INSTRUCTOR NOTE:** *Instructors may want to use recent examples of such cases from local area agencies.*

II. LEADING CAUSES OF CIVIL LITIGATION AGAINST LAW ENFORCEMENT OFFICERS

- A. False arrest – arrests made without probable cause. **P. O. 2.12.1**
P. O. 2.12.1A
- B. First aid – either rendering first aid improperly or failing to render first aid when necessary. **P. O. 2.12.1B**
- C. Excessive force. **P. O. 2.12.1C**
 - 1. Officers must know the statutory rules regarding use of force. **INSTRUCTOR NOTE:** *Graham v. Connor, 490 U.S. 386 (1989). The factors to use in determining whether force is reasonable under circumstances: 1. Severity of the crime. 2. Whether the suspect is actively resisting arrest. 3. Whether the suspect is attempting to escape. 4. Whether the suspect poses an immediate threat to the safety of the officers or others.*
 - 2. Federal constitutional law is more strict than Arizona statutes regarding use of force on fleeing felons: Deadly force may be used only with felons involved in crimes of violence or otherwise constituting a danger to the public.
 - 3. Possible sources of liability include negligence, assault and battery, wrongful death and civil rights violations. This is where claims of negligent training, supervision, hiring and retention often occur.
- D. Vehicle collisions – includes liability for negligent traffic control, simple traffic accidents, pursuits, failing to clear an intersection, and pursuits which end in or cause accidents and “Code 2.5” driving (driving your police vehicle at high speed without lights and siren). **P. O. 2.12.1D**
- E. Illegal search and seizure – includes stops without reasonable suspicion and searches without a warrant or an applicable exception to the warrant requirement. **P. O. 2.12.1E**

- F. Failure to protect – generally, no specific duty owed to an individual person; however, if you make promises, which creates a special relationship, or assert control over the individual, you have a legal duty. **P. O. 2.12.1F**
1. Examples include the drunk you come in contact with and then leave on the side of the street, who is later killed while crossing the street. (Special relationship)
 2. Another example might be the domestic violence victim who tells you not to worry, that “The police will take care of her.” (State created danger)
- G. Work place harassment – discrimination on the basis of protected class or category, the creation of, or participation in, a hostile work environment, sexual harassment or violence in the work place. **P. O. 2.12.1G**

III. CIVIL LIABILITY

- A. Distinguish between criminal and civil law.
1. Criminal law.
 - a. Government complains of individual’s conduct.
 - b. Fine or imprisonment imposed if found guilty.
 - c. Guilt is established beyond a reasonable doubt.
 - d. Burden of proof is on the government.
 - e. Jury must be unanimous.
 2. Civil law.
 - a. Individual complaints of another’s conduct.
 - b. Individuals ask court for a remedy (usually money or injunctive relief).
 - c. Responsibility is established by a preponderance of the evidence (more than 50%).
 - d. Burden of proof is on the plaintiff.
 - e. Jury need not be unanimous.
- B. Tort – defined as a civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages. Includes:
1. Intentional torts (assault, defamation, false arrest).

2. Negligent torts (automobile accidents).
3. Strict liability (handling of explosives).
4. Constitutional torts (civil rights violations).

C. Direct and Agency liability.

P. O. 2.12.2

1. Direct liability – the actor himself/herself is responsible for the act that occurred and the damages associated with that act.
2. Vicarious (Agency) liability – Circumstances where the agency can be held liable for the acts of the officers. Vicarious liability is a legal term used to explain the legal responsibility one party may hold for actions that cause harm, even if they aren't the party that directly caused the harm. Also, sometimes referred to as imputed liability, vicarious liability states that any party who is in an authoritative legal relationship with another party is legally responsible if their actions cause harm to the other party. In short, the agency or your superiors can be liable for your actions.
3. Respondent superior is the legal theory that holds that an employer is responsible for the wrongs committed by its employee, so long as the employee is acting within the scope of employment. This principle allows the municipality to be sued for employee's torts committed within the scope of employment.
4. Specific examples of agency liability:
 - a. Negligent employment – agency knew, or should have known, that the employee should never have been hired (e.g., hiring someone for whom there is an outstanding arrest warrant for first-degree homicide). (Example: Hiring of ex-felons by LAPD, Officer Involved Shooting case from Chicago and/or pattern of constitutional violations.)
 - b. Negligent retention – agency knew, or should have known, that the employee should not have been retained (e.g., retaining an officer after the officer intentionally and unlawfully uses deadly force).
 - c. Negligent assignment or entrustment – agency knew, or should have known, that the employee should not have been assigned to a particular assignment or that the employee was not responsible enough to entrust with a particular piece of equipment (e.g., assigning an alcoholic to an undercover squad or allowing an officer to retain his/her duty weapon while suspended for personal mental health problems).
 - d. Negligent supervision – knew, or should have known, that the employees needed better supervision (e.g., not supervising employees or failing to write appropriate

- policies providing guidance to employees).
- e. Negligent failure to train – knew, or should have known, that there was a need to train and failure to do so (e.g., failure to train on when to discontinue the use of force, even if the force was initially applied in a lawful manner).
 - f. Negligent training – knew, or should have known, that the training was somehow insufficient (e.g., not including new statutory changes in training; not providing realistic training).
5. Intentional torts – examples of direct liability:
- a. Assault and battery.
 - i. Battery – an offensive or unwarranted touching of a person.
 - ii. Assault – placing a person in “imminent apprehension” of a battery.
 - iii. Most false arrest claims will also include assault claims.
 - iv. Usual defense is that the officer is entitled to use objectively reasonable force.
 - b. False arrest and false imprisonment.
 - i. Generally, any arrest without probable cause.
 - ii. Whether the person is guilty or innocent is not an issue.
 - iii. Good faith or reasonable belief defense may be available.
 - iv. Arrests with a warrant rarely result in false arrest verdicts, unless the warrant was invalid or defective on its face.
 - c. Malicious prosecution.
 - i. Involves the right to be free from unjustified litigation.
 - ii. Must prove absence of probable cause.
 - iii. Actual malice must be shown.
 - d. Others:
 - i. Trespass.

- ii. Defamation.
 - iii. Invasion of privacy.
 - iv. Intentional infliction of emotional distress.
 - e. Common defenses – in the law enforcement context, common defenses include the existence of reasonable suspicion or probable cause, the right to use reasonable force and good faith.
- D. Negligent torts – examples of direct liability.
- 1. Elements of a negligence case:
 - a. Duty.
 - b. Breach of duty.
 - c. Injury.
 - d. Breach of duty is the proximate cause of injury.
 - 2. Common defenses – no duty, no breach of duty, no injury or no proximate cause.
 - 3. Officers must remember that all duties, whether imposed or volunteered, must be performed with reasonable care. General police duties, which may form the basis of negligence claims, include the following:
 - a. Care of incapacitated persons – once you start, you must finish.
 - b. Reasonable medical care – The best course of action is to perform and/or seek medical care for an individual that is in need of medical assistance.
 - c. Duty to protect property in your custody.
 - d. Care of the arrestee – both with regard to the arrestee and his/her actions.
- E. Liability created by statute.
- 1. 42 U.S. §1983, which will be discussed later in this class, creates a cause of action based on the violation of a constitutional right. It specifically authorizes recovery for violation of many different statutory rights.
 - 2. State statutes may also be the source of negligence litigation.
 - a. The prime example is emergency driving.

- b. Emergency vehicle operations are governed by statute and non-compliance is either negligence per se or strong evidence of negligence.
- c. The statute itself establishes the duty that an officer may not breach.

IV. ARIZONA STATUTORY ISSUES**P. O. 2.12.3****A. Civil.**

- 1. The state of Arizona has virtually abolished sovereign immunity (the immunity of the government from suit). The only immunities left for governments is absolute immunity or qualified immunity. **INSTRUCTOR NOTE:** *Absolute immunity bars suit altogether. Qualified immunity (under state statute) means that the employee cannot be held liable unless the employee intended to cause injury or was grossly negligent.*
 - a. There are currently only a few limitations on when the government (including law enforcement agencies) can be sued.
 - b. Those limitations may be found in A.R.S. §12-820 and following statutes.
 - c. For example, a public employee acting within the scope of the employee's duties has qualified immunity regarding the decision not to arrest or take someone into custody.
- 2. Many state statutes establish duties that, if breached, could lead to suit.
 - a. A good example is A.R.S. §28-624, regarding emergency driving. (Review the requirements of ARS 28-624)
 - b. This statute allows authorized emergency vehicles to exceed posted speed limits and proceed through red traffic signals and through stop signs, so long as emergency lights and siren are activated.
 - c. However, subsection D of A.R.S. §28-624 provides that police officers and other operators of emergency vehicles must drive with due regard and may be subject to liability for accidents caused by reckless disregard of others' safety.

P. O. 2.12.3**B. Criminal – the definition of “person” in A.R.S. §13-201 makes no exception for police officers. Therefore, police officers can be held liable to the same degree as any citizen under each and every one of the criminal statutes. (Review the provisions of ARS 13-201)**

- 1. A.R.S. §13-201 Requirements for criminal liability. The minimum requirement for criminal liability is:
 - a. The performance by a person of conduct.

- b. Which includes a voluntary act or the omission to perform a duty imposed by law.
 - c. Which the person is physically capable of performing.
2. Officers must become familiar with those statutes that provide officers with justification for their actions (see Chapter 4 of Title 13) and must abide by those statutes.
- a. 13-402. Justification; execution of public duty – Unless inconsistent with the other sections of this chapter defining justifiable use of physical force or deadly physical force or with some other superseding provision of law, **Conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.** ***INSTRUCTOR NOTE:** This is why officers are not routinely prosecuted for offenses such as possession of marijuana when they seize and impound it properly. (see 13-401 justification as defined in this chapter, is a defense in any prosecution for an offense pursuant to this title.) See also 13-3412A4.*

V. FEDERAL STATUTORY ISSUES

P. O. 2.12.4

A. Historical background.

1. The 14th Amendment of the United States Constitution guarantees due process and equal protection to all persons.
2. It was adopted immediately after the Civil War in an effort to ensure that states would provide due process and equal protection to all persons.
3. The statutes we are about to review are the application of the 14th Amendment to local government and subject those who violate another's civil rights to criminal penalties and civil damages.

B. Criminal (18 U.S. §241) – DUE PROCESS. (Student handout)

1. Two (2) or more persons conspire.
2. To willfully injure, oppress, threaten or intimidate any citizen from enjoying or exercising any right guaranteed under the laws of the United States or the Constitution.
3. Penalty: From a fine to death, depending on the nature of the act and the injury to the victim.

P. O. 2.12.5

- a. Examples: KKK members setting fire to a predominantly African American church.
- b. Skinheads assaulting a Jewish rabbi.

- C. Criminal (18 U.S. §242) – EQUAL PROTECTION. (Student handout)
1. Person acting under “color of law.”
 2. Willfully deprives any inhabitant of a right guaranteed under the laws of the United States or the Constitution.
- OR -
1. Person acting under “color of law.”
 2. Willfully subject any inhabitant to different punishment or penalties than prescribed for citizens.
 3. Because of their status as aliens or because of race or color.
 4. Penalty: From a fine to death, depending on the nature of the act and the injury to the victim.
P. O. 2.12.5
 - a. Police officers who assault a suspect who has just been arrested for the shooting of another officer.
 - b. A police officer who makes an illegal entry into the home of a Hispanic family because “They are probably illegal anyway.”
- D. Civil (42 U.S.C. §1983) – requires states to provide equal protection and due process to all their citizens and establishes liability for failure to do so. **P. O. 2.12.6**
1. Person acting under “color of law.” (Student handout)
 2. Deprives any inhabitant of a right guaranteed under the Constitution or under certain laws of the United States.
 3. Basis of liability – the officer knew, or should have known, that the action would violate the constitutional rights of the person, or the officer acted with malicious intent to deprive a person of constitutional rights or to injure. (Spooner v. City of Phoenix)
 4. Agency policy or custom – liability of the agency may also be based on an adopted agency policy or custom. The theory is that the agency’s actions “caused” the employee to act in a particular manner. This theory of liability is often advanced in cases arising under 42 U.S.C. §1983, as it is the primary way that plaintiffs can reach the “deep pockets” of the employer.
 5. Examples – false arrest, excessive use of force, illegal search and seizure, illegal interrogation, interference with 1st Amendment rights (speech, press) and so on.

6. Defenses – the following, if established, result in qualified immunity for the officer:
 - a. The actions in question did not violate constitutional rights (e.g., the existence of probable cause in an action for false arrest), or
 - b. The facts and circumstances could be interpreted whether the law was clearly established such that a well-trained officer would be on notice that their actions would result in a violation of a person's constitutional rights.
 - i. Note: This is an objective standard – it does not matter what the police officer subjectively believed.
 - ii. This is generally known as the “good faith” defense.

VI. DEPARTMENT PROCEDURES; PERSONAL LIABILITY

- A. Every officer should become familiar with his/her agency’s position regarding police professional liability litigation.
 1. Every officer should understand, under certain circumstances, that the agency will provide a defense to liability lawsuits (the general rule in most agencies is that a defense is offered unless the officer was engaged in intentional criminal conduct).
 2. This means that the agency will hire an attorney to represent you in the lawsuit and, in most situations, pay any damages that may be awarded against you.
- B. Process – every officer should become familiar with his/her agency’s procedures for handling a lawsuit if one is served upon the officer.
 1. Whom do you send the paperwork to, whom do you notify and do you need to complete a memo or report?
 2. Most lawsuits must be responded to by the attorney representing you within 20 days of service, so it is important that you immediately notify the agency of the existence and service of the suit.

VII. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).

