

Unit 6

Legal and Liability

6.1.0. Unit Goal: Summarize liability and legal issues involving emergency Telecommunicators and their agencies.

6.1.1 Learning Objective: Define types of liability.

- Liability – one of the most significant words in the field of law, liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves him/her/it open to a lawsuit for any resulting damages or a court order to perform (as in breach of contract or violation of statute). In order to win a lawsuit, the suing party (plaintiff) must prove the legal liability of the defendant if the plaintiff's allegations are shown to be true.

Law.Com. Search Legal Terms and Definitions. Liability. (2018).

<https://dictionary.law.com/Default.aspx?selected=1151>

- Civil Liability – refers to responsibility for debts or wrongdoing against another private party. For example, if a Telecommunicator fails to advise an officer about the presence of a gun and the officer is killed on a call, the family of the officer--if the state allows--can file a civil case against the agency and/or Telecommunicator
- Criminal Liability deals with wrongdoing against society as a whole. It means the person has committed an offense against state criminal codes.
- Vicarious Liability – refers to the responsibility placed upon one person for the failure of another with whom the first person has a special relationship, such as parent and child or employer and employee, to exercise such care as a reasonably prudent person would use under similar circumstances.

Sheila Hanna-Wiles, RPL. Know Your Liability. APCO Intl. CDE #41527. Page 29. (June 2016).

<https://www.apcointl.org/download/cde-41527-know-your-liability/?wpdmdl=6065&ind=0>

- Tort – from French for “wrong,” a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs which result in harm. Therefore, tort law is one of the major areas of law (along with contract, real property, and criminal law) and results in more civil litigation than any other category. Some intentional torts may also be crimes, such as assault, battery, wrongful death, fraud, conversion (a euphemism for theft) and trespass on property and form the basis for a lawsuit for damages by the injured party. Defamation, including intentionally telling harmful untruths about another-either by print or broadcast (libel) or orally (slander) is a tort and used to be a crime as well.

Law.Com. Search Legal Terms and Definitions. Tort. (2018).

<https://dictionary.law.com/Default.aspx?selected=2137>

6.1.2 Learning Objective: Explain the Seven Affirmative Links to a tort.

- Failure to Train – agencies have an obligation to provide valid, job-related training for their recruits.
- Negligent Hire – when a person is hired without using proper screening techniques. This involves situations when an agency is aware of the shortcomings of their prospective applicant and hires that person anyway. This affirmative link is reached only when a reasonable person is able to determine that the lack of screening was plain and obvious.
- Negligent Retention (failure to discipline) – after hire, the agency becomes aware, or should have become aware, of a problem behavior and does nothing to correct it.
- Negligent Entrustment - entrusting a person into a position of responsibility who clearly should not have held such a position.
- Negligent Supervision – FTOs must observe and correct behavior of recruits. Tolerating inappropriate behavior, such as violating or depriving people of their basic rights, makes an FTO negligent in this area.
- Negligent Assignment – when a recruit is not transferred or suspended to a non-sensitive assignment after numerous substantiated disciplinary reports are received. Also, this deals with persons being assigned to positions that they are not properly trained or qualified for.
- Failure to Direct – failing to give a recruit direction for a task that they obviously do not understand how to complete.

Field Training Officer Course. TCOLE Course Number 3702, September 2007. Unit 4.1, A, 107. <https://www.tcole.texas.gov/content/course-curriculum-materials-and-updates-0>

6.1.3 Learning Objective: Define the term and elements of negligence.

- Negligence - A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct). Ordinary care means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm.
- The four elements required to establish a prima facie case of negligence:
 - Duty - a legal obligation, the breach of which can result in liability. In a lawsuit, a plaintiff must claim and prove that there was a duty by defendant to plaintiff. This can be a duty of care in a negligence case or a duty to perform in a contract case.

Law.Com. Search Legal Terms and Definitions.

<https://dictionary.law.com/Default.aspx?selected=598>

- Breach – the act of failing to perform one's agreement, breaking one's word, or otherwise actively violating one's duty to another.

Law.Com. Search Legal Terms and Definitions.

<https://dictionary.law.com/Default.aspx?selected=92>

- Cause of Action - the basis of a lawsuit founded on legal grounds and alleged facts which, if proved, would constitute all the "elements" required by statute.
Examples: to have a cause of action for breach of contract there must have been an offer of acceptance; for a tort (civil wrong) there must have been negligence or intentional wrongdoing and failure to perform.

Law.Com. Search Legal Terms and Definitions.

<https://dictionary.law.com/Default.aspx?selected=156>

- Damages – n. the amount of money which a plaintiff (the person suing) may be awarded in a lawsuit.

Law.Com. Search Legal Terms and Definitions.

<https://dictionary.law.com/Default.aspx?selected=423>

- Standard of Care - The degree of care (watchfulness, attention, caution, and prudence) that a reasonable person should exercise under the circumstances. If a person does not meet the standard of care, he or she may be liable to a third party for negligence.

Cornell University. Legal Information Institute. WEX. Standard of Care. (2018).

https://www.law.cornell.edu/wex/standard_of_care

- Gross Negligence - A lack of care that demonstrates a reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence and can affect the amount of damages.

Cornell University. Legal Information Institute. WEX. Gross Negligence. (2018).

https://www.law.cornell.edu/wex/gross_negligence

6.1.4 **Learning Objective:** Define the term immunity and related laws.

- Immunity - exemption from penalties, payments or legal requirements, granted by authorities or statutes. Types of Immunity:
 - a promise not to prosecute for a crime in exchange for information or testimony in a criminal matter, granted by the prosecutors, a judge, a grand jury or an investigating legislative committee
 - public officials' protection from liability for their decisions (like a city manager or member of a public hospital board)
 - governmental (or sovereign) immunity, which protects government agencies from lawsuits unless the government agreed to be sued; d) diplomatic immunity which excuses foreign ambassadors from most U.S. criminal laws.

Law.Com. Search Legal Terms and Definitions.

<https://dictionary.law.com/Default.aspx?selected=897>

- Liability of a Municipality - A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to police and fire protection and control.

- Texas Civil Practice and Remedies Code Chapter 101, Tort Claims, Subchapter C. Exclusions and Exemptions. **Section 101.062. 9-1-1 Emergency Service.** (b) This chapter applies to a claim against a public agency that arises from an action of an employee of the public agency or a volunteer under the direction of the public agency and that involves providing 9-1-1 service or responding to a 9-1-1 emergency call only if the action violates a statute or ordinance applicable to the action.

Texas Constitution and Statutes. Civil Practice and Remedies Code, Title 5. Governmental Liability Chapter 101. Tort Claims, Subchapter B. Tort Liability of Governmental Units Sec. 101.0215 and Subchapter C. Exclusions and Exceptions Sec. 101.062 (b).

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm#101.021>

“Civil Practice and Remedies Code.” Texas Constitution and Statutes. Title 5.

Governmental Liability. Chapter 101. Tort Claims. Subchapter A. General Provisions. Sec. 101.0215 and Sec. 101.062.

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm>

6.1.5 Learning Objective: Review State laws regulating public safety Telecommunicators and their agencies.

- Texas Health and Safety Code, Subchapter C. Administration of State Emergency Communications Safety Code §771.053 under Statewide Limitation on Liability of Service Providers and Certain Public Officers:
 - A service provider of communications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, a developer of software used in providing 9-1-1 service, a third party or other entity involved in providing 9-1-1 service, or an officer, director, or employee of the service provider, manufacturer, developer, third party, or other entity involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.
 - A member of the commission or of the governing body of a public agency is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.
 - This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Texas Constitution and Statutes, Health and Safety Code, Title 9. Safety. Subtitle B.

Emergencies. Chapter 771. State Administration of Emergency Communications.

Subchapter C. Administration of State Emergency Communications Safety Code §771.053 General Provisions. Section 771.053. Statewide Limitation on Liability of Service Providers and Certain Public Officers.

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.771.htm>

- Texas Health and Safety Code, Subchapter C. Administration of State Emergency Communications Safety Code §771.061 under Statewide Confidentiality of Information reads:
 - Information that a service provider of communications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service or that a service provider, third party, or other entity voluntarily furnishes at the request of a governmental entity in providing 9-1-1 service is confidential and is not available for public inspection.
 - Information that is contained in an address database maintained by a governmental entity or a third party used in providing 9-1-1 service is confidential and is not available for public inspection. The service provider or third party is not liable to any person who uses a 9-1-1 service for the release of information furnished by the service provider or third party in providing 9-1-1 service unless the act or omission proximately causing the claim, damage or loss constitutes gross negligence, recklessness, or intentional misconduct.
 - Information that a service provider furnishes to the commission or an emergency communication district to verify or audit emergency service fees or surcharge remittances and that includes access line or market share information of an individual service provider is confidential and not available for public inspection.
 - This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Texas Constitution and Statutes, Health and Safety Code, Title 9. Safety. Subtitle B. Emergencies. Chapter 771. State Administration of Emergency Communications. Section 771.061. Statewide Confidentiality of Information.

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.771.htm>

- Texas Health and Safety Code, Subchapter E. Emergency Medical Dispatch, under Section Liability §771.108 reads:
 - The operations of the regional emergency medical dispatch resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Texas Constitution and Statutes, Health and Safety Code, Title 9. Safety. Subtitle B. Emergencies. Chapter 771. State Administration of Emergency Communications. Subchapter E, Section 771.108. Liability

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.771.htm>

- Texas Civil Practice and Remedies Code, Subchapter D. Emergency Care under Section §74.151, Liability for Emergency Care (Good Samaritan Act) reads:
 - A person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is willfully or wantonly negligent, including a person who:
 - administers emergency care using an automated external defibrillator; or

- administers emergency care as a volunteer who is a first responder as the term is defined under Section 421.095, Government Code.
- This section does not apply to care administered:
 - for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or
 - by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.
- Except as provided by this subsection, this section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered. This subsection does not apply to liability of a school district or district school officer or employee arising from an act or omission under a program or policy or procedure adopted under Subchapter O-1, Chapter 161, Health and Safety Code, other than liability arising from willful or intentional misconduct.

Texas Constitution and Statutes, Civil Practice and Remedies Code, Title 4. Liability in Tort. Chapter 74. Medical Liability. Subchapter D. Emergency Care. Sec. 74.151. Liability for Emergency Care (Good Samaritan Act).

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.74.htm>

- Texas Civil Practice and Remedies Code. Subchapter D. Emergency Care under Section §74.152. Unlicensed Medical Personnel reads:
 - Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is willfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.

Texas Constitution and Statutes, Civil Practice and Remedies Code, Title 4. Liability in Tort. Chapter 74. Medical Liability. Subchapter D. Emergency Care. Sec. 74.152. Unlicensed Medical Personnel (Good Samaritan Act).

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.74.htm>

- Texas Labor Code. Chapter 22. Employment Discrimination for Participating in an Emergency Evacuation reads:
 - Section 22.002, Discrimination Prohibited:
 - An employer may not discharge or in any other manner discriminate against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order.
 - Sec. 22.003. Liability; Reinstatement
 - An employer who violates Section 22.002 is liable for any loss of wages and employer-provided benefits incurred by the employee as a result of the violation.

- A person discharged in violation of Section 22.002 is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay.
- Sec. 22.004. Exemption; Emergency Services Personnel
 - Section 22.002 does not apply to individuals employed as emergency services personnel if the employer provides adequate emergency shelter for those individuals.
 - This chapter does not apply to a person who is necessary to provide for the safety and well-being of the general public, including a person necessary for the restoration of vital services.

Texas Constitution and Statutes, Labor Code, Title 2. Protection of Laborers. Subtitle A. Employment Discrimination. Chapter 22. Employment Discrimination for Participating in Emergency Evacuation.

<https://statutes.capitol.texas.gov/Docs/LA/htm/LA.22.htm>

6.1.6 Learning Objective: Identify methods for reducing liability in the communications center.

- Liability Best Practices: In a communication center, there are several ways to reduce liability:
 - Follow the policy and procedures. Abiding by the policy and procedures set forth by the agency mitigates the risk for the telecommunicator.
 - Identify and report outdated policy and procedures. As a telecommunicator, you are responsible for identifying and reporting outdated agency policies and procedures to your supervisor. Having done so, it is then the agency's responsibility to make any necessary changes to them.
 - Report policy and procedures that do not meet agency goals. Choosing not to make your voice heard can put you in the hot seat in a court of law.
 - Attend all training opportunities. Telecommunicators are ultimately responsible for themselves. If telecommunicators want to put on a shield of armor, then they should attend any available training. If telecommunicators miss a training opportunity, they should find another option to participate in the training. They should also seek additional training opportunities in areas in which they may be weak.
 - Understand the importance of a quality assurance/improvement program.
 - This program is not a disciplinary program, but rather a motivational tool and an agency's "insurance policy" that everyone is being properly trained.
 - Get behind accreditation and certification. Each agency that chooses to meet the Association of Public-Safety Communications Officials (APCO) Agency Training Certification requirements and/or the Commission on Accreditation for Law Enforcement Agencies (CALEA) Accreditation requirements will minimize its liability tremendously. The standards required in each of these programs have been created by industry experts who understand the operations of a communication center. An agency that earns either of these recognitions ensures that every telecommunicator follows the requirements.

- Document, document, document. As the saying goes, if it's not in writing, it didn't happen. Information typed into the CAD system could mean the difference between "guilty" and "not guilty." The CAD record should draw a picture of what is happening or has occurred throughout the entire call for service. Minimum documentation in the CAD record will raise a red flag in a courtroom. Trying to remember what happened because it wasn't put in the CAD is even harder.
- The risk that every person carries in the communication center is the same amount of risk that someone else would carry in any other job or profession — maybe not the exact type, but it is all a liability. The key is to minimize your exposure.

Sheila Hanna-Wiles, RPL. Know Your Liability. APCO Intl. CDE #41527. Page 30. (January/February 2016).

<https://www.apcointl.org/download/cde-41527-know-your-liability/?wpdmdl=6065&ind=0>

- Public Expectation for Telecommunicators:
 - The public expects their 9-1-1 call to be answered by the appropriate Public Safety Answering Point (PSAP) who can ensure efficient and effective emergency assistance is provided to them.
 - Increasingly, the public has access to new technologies that they expect will also be able to connect to 9-1-1 in an emergency, particularly the youth of our nation who communicate using text and video communications, unlike any generation before them.
 - This is also true of the deaf and hard of hearing community that is increasingly using text devices to communicate and must be able to access 9-1-1 as efficiently and easily as the rest of the hearing public.
 - To accommodate the growing expectations of the public and the needs of 9-1-1 Telecommunicators, the 9-1-1 system must evolve and is already beginning to evolve, to a next generation 9-1-1 system.

911.GOV. NENA. Funding 9-1-1 into the Next Generation. Page 9. (March 2007).

https://www.911.gov/pdf/NENA_Funding_911_Into_Next_Generation_2007.pdf

- Training:
 - A profession can be defined as an endeavor that requires continuing education /training in order to maintain a required level of skill and proficiency. The Public Safety Communication Center (PSCC) is unique to many job environments, requiring a consistent level of performance while maintaining a constant environment of change driven greatly by technology, but also by the expectations from an ever-changing environment caused by the needs of the public and the needs of the field responder.
 - Public safety training standards help facilitate the training of 9-1-1 and law enforcement, fire-rescue, and EMS dispatchers and other supporting staff, assisting PSCCs through the establishment of baseline criteria for training, and provide baselines for expectations in the PSCC and the individual(s) who every day support the public's request for help and the response of the public safety team.

- The Minimum Training Standards for Public Safety Telecommunicators (PST), formerly Project 33 or P33, provides a comprehensive outline for training programs and curriculum. APCO's (Public Safety Communications) Call Center Standards Committee has worked diligently in the research and composition of this standard stating; "The focus of this standard is to provide the training necessary for front-line public safety communications personnel to be competent in the delivery of service the public deserves and expects."

APCO International. Public Safety Communications: The Lifeline of Public Safety. The Status of the Profession, Challenges Faced, and the Need for Change. Page 16-17. (August 2011).

https://www.apcointl.org/images/pdf/prochrt_2ndedition.pdf

- Legislatively Required Continuing Education for Texas Telecommunicator Licensees.
 - Each licensee shall complete the legislatively mandated continuing education in Chapter 218 Continuing Education. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.
 - Each training Unit (2 years)
 - Telecommunicators shall complete at least 20 hours of continuing education.

Texas Administrative Code, Title 37. Public Safety and Corrections. Part 7. Texas Commission on Law Enforcement. Chapter 218. Continuing Education. Rule §218.3.

Legislatively Required Continuing Education for Licensees. Effective February 5, 2020

[http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=7&ch=218&rl=3](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=7&ch=218&rl=3)

- Quality Assurance / Quality Improvement (QA/QI) Process:
 - Quality Assurance (QA): All actions are taken to ensure that standards and procedures are adhered to and that delivered products or services meet performance requirements.
 - Quality Assurance Process: A formal assessment process by which actual performance, behavior, and outcomes are compared against established standards to ensure compliance, consistency, and accuracy in the delivery of service.
 - Quality Assurance Case Review: An audit that is used to assess the performance of the telecommunicator's processes in receiving and handling calls for service or dispatched events.
 - Quality Assurance and Improvement Program: An ongoing program providing, at a minimum, the random case review evaluating emergency call taking and dispatch performance, feedback on protocol compliance, commendation, retraining and remediation as appropriate, and submission of compliance data to the agency.
 - Quality Improvement (QI): An organized system that assesses and evaluates the process to improve the quality of services provided.
 - Quality Improvement Process: Actions taken to improve or correct areas of concern.

- The agency shall establish written directives defining agency performance expectations, case review criteria, data evaluation, performance measurement criteria, documentation procedures and requirements, reporting procedures and requirements, and confidentiality rules of the QA/QI process.
- Agencies may implement other elements as necessary to meet local, state/provincial, federal or tribal requirements and agency-specific needs.

APCO/NENA ANS 1.107.2015. Standard for the Establishment of a Quality Assurance and Quality Improvement Program for Public Safety Answering Points. Page 16-18, 21. (2015).
https://cdn.ymaws.com/www.nena.org/resource/resmgr/Standards/APCO-NENA_ANS_1.107.1.2015_Q.pdf

- Employee Evaluation
 - An employee evaluation is the assessment and review of a worker's job performance. Most companies have an employee evaluation system wherein employees are evaluated on a regular basis (often once a year).
 - Typically, these assessments are done at year end or on the employee's service anniversary.
 - Regular employee evaluation helps remind workers what their managers expect in the workplace. They provide employers with information to use when making employment decisions, such as promotions, pay raises, and layoffs.
 - In a traditional employee evaluation, the manager or supervisor writes and presents the employee's contributions and shortcomings to the employee. The manager and employee then discuss improvements. Some organizations ask the employee to write a self-evaluation before the meeting.

Susan M. Heathfield. The Balance Careers. Employee Evaluation. Employee Performance Evaluation Tells Employees How they are Performing. February 6, 2018.
<https://www.thebalancecareers.com/employee-evaluation-1918117>

6.1.7 **Learning Objective:** Identify common liability risk factors.

- Lawsuits that have been filed against communication centers usually demonstrate the presence of one or more dispatch "danger zones". Remember that the dispatch danger zones are recurrent errors and omissions that are found in many complaints and lawsuits. Often, these areas pertain to the individual as well as to the agency and include the following items:
 - Verification failure: Failure to verify the most basic call information can doom a call from the beginning. If you cannot find the emergency, you cannot take action. Call takers must verify where the problem is located, the callback number, and other pertinent information. If the field response is sent to the wrong location, disaster can (and does) result.
 - No-Send Policies: No-send policies are a fact of life in some of today's public safety agencies. Agencies that have no-send policies for certain types of calls, however, create the danger of mishandling a call for service. Because no two calls are the same, a blanket no-send policy could end up hurting the agency in the long run. No-send policies that are based on a properly implemented and managed priority dispatch system provide protection against liability claims. They

are based on research and apply the no-send policy (or the safer method for medical calls of alternative response or referral) based on the exact nature of the call, rather than relying on a generalized blanket policy.

- Delayed Responses: Agencies are expected to respond to all calls promptly and courteously. If the response is significantly delayed, the caller feels that he or she is being ignored or forgotten. In some cases, the call might be prioritized at too low of a level, resulting in a late response. The call taker must obtain information related to the urgency of the call, then properly classify the call and assign its priority. Urgent calls must receive the correct level of response.
- Repeat Calls: These are situations in which more than one call is needed in order to get a field response. Repeated calls from the same caller are as bad as a delayed response. The caller feels that he or she is not being taken seriously. While some callers might call back for minor calls, proper information gathering can help assign the proper response in a timely manner. Repeat calls may occur as a result of having no protocol to follow. Appropriate customer service can also help callers understand a delayed response.
- Lack of Protocol: Call takers have varying levels of experience and training. Their knowledge of policy and procedure also varies. Establishing consistency between the actions of individual call takers is a difficult job unless written protocols are in place. By using a properly implemented and managed protocol, you can establish consistency and reduce the agency's liability
- Personal biases and/or attitudes: The call taker might have preconceived notations and impose, personal, negative, impressions. The call taker in these cases might be prejudiced against the caller for a variety of reasons, which leads to inattentiveness and mishandling of the call.
- Non-compliance with protocols: If the call taker has protocols but does not follow them, he or she becomes another easy target. The plaintiff's attorney will argue that if the protocol were followed, the incident would not have had the damaging outcome. Claims of poor or insufficient training and supervision are often made in these cases.
- Misinterpreting the caller's complaint: Sometimes a call taker misinterprets the problem and misclassifies the call by not listening or making quick judgments. The response in these cases is often inappropriate. Everyone suffers when the caller makes a complaint and the tapes can show that the caller needed help and the call taker did not listen (or worse, the call taker did not evaluate the situation properly). One of the call taker's duties is to properly interpret and classify the call. A mistake here can raise the liability exposure for both the agency and the call taker.
- Problems at shift change: At shift change, information might not be passed on; calls might be handled too quickly or too slowly, and many other problems might occur. Whenever a personnel changeover occurs, care must be taken to ensure that nothing falls through the cracks.
- Emergency Vehicle Collisions: Every year responders and other bystanders are injured in emergency vehicle collisions. Because of this risk, agencies have begun

to question the practice of routinely sending responders with lights-and-siren. A pre-approved protocol can allow for the safe assignment of response priorities.

- “Danger zones” point out the need for risk management, the need for consistency in call handling, and the need for protocol and adherence to that protocol. A complete risk-management plan requires the cooperation and compliance of employees in order to be effective.

Emergency Telecommunicator Course Manual. The National Academies of Emergency Dispatch. Edition 1. Risk Management and Liability Page 155-160. (2001)

<https://books.google.com/books?id=HEKvYe01Ze0C&pg=PA155&dq=dispatch+danger+zones&hl=en&sa=X&ved=0ahUKEwjT1ZSV-NXbAhXB2FMKHxG4CtoQ6AEIKTAA#v=onepage&q=dispatch%20danger%20zones&f=false>

6.1.8 **Learning Objective:** Define the Freedom of Information Act (FOIA) and law enforcement exemptions.

- Since 1967, the Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government.
- Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement.
 - Exemption 1 - Protects information that is properly classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy.
 - Exemption 2 - Protects information related solely to the internal personnel rules and practices of an agency.
 - Exemption 3 - Protects information specifically exempted from disclosure by another statute, if that statute either: (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld. An Exemption 3 statute must also cite specifically to subsection (b)(3) of the FOIA if enacted after October 28, 2009.
 - Exemption 4 – Protects trade secrets and commercial or financial information that is obtained from outside the government and that is privileged or confidential.
 - Exemption 5 – Protects certain records exchanged within or between agencies that are normally privileged in the civil discovery context, such as records protected by the deliberative process privilege (provided the records are less than 25 years old), attorney work-product privilege, or attorney-client privilege.
 - Exemption 6 – Protects information about individuals in personnel and medical files and similar files when the disclosure of that information would constitute a clearly unwarranted invasion of personal privacy.

- Exemption 7 – Protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
 - could reasonably be expected to interfere with enforcement proceedings;
 - would deprive a person of a right to a fair trial or an impartial adjudication;
 - could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis. In the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, it also protects information furnished by the confidential sources;
 - would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law;
 - could reasonably be expected to endanger the life or physical safety of any individual.
- Exemption 8 – Protects information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, an agency responsible for the regulation or supervision of financial institutions.
- Exemption 9 – Protects geological and geophysical information and data, including maps, concerning wells.
- The FOIA also requires agencies to proactively post online certain categories of information, including frequently requested records. As Congress, the President, and the Supreme Court have all recognized, the FOIA is a vital part of our democracy.
- The FOIA provides that when processing requests, agencies should withhold information only if they reasonably foresee that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. Agencies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they should take reasonable steps to segregate and release nonexempt information.
- The Office of Information Policy at the Department of Justice is responsible for issuing government-wide guidance on the FOIA as part of its responsibilities to encourage all agencies to fully comply with both the letter and the spirit of the FOIA.

United States Department of Justice. FOIA.Gov. Learn About FOIA. What is FOIA? (2108). <https://www.foia.gov/about.html>

6.1.9 **Learning Objective:** Review the Texas Public Information Act.

- The Texas Public Information Act (the “Public Information Act” or the “Act”) gives the public the right to request access to government information.

- Exceptions to the Act – Although the Act makes most government information available to the public, some exceptions exist. If an exception might apply and the governmental body wishes to withhold the information, the governmental body generally must, within ten business days of receiving the open records request, refer the matter to the OAG for a ruling on whether an exception applies. If the OAG rules that an exception applies, the governmental body will not release the information. If a governmental body improperly fails to release information, the Act authorizes the requestor or the OAG to file civil lawsuit to compel the governmental body to release the information.

Texas Attorney General. The Office of the Attorney General of Texas Public Information Act Handbook 2018. Page i (2018).

https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA_handbook_2018_0.pdf

6.1.10 Learning Objective: Review retention schedules for records of public safety agencies as indicated by the Texas State Library and Archives Commissions.

- This schedule establishes mandatory minimum retention periods for records commonly found in public safety agencies. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period that is less than that established for the record in this schedule.
- Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under it, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third-degree felony (Penal Code, Section 37.10)
- The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government.
- Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period applies only to an official record, as distinct from convenience or working copies created for informational purposes.
- A local government record whose retention period has expired may not be destroyed if any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record is initiated; its destruction shall not occur until the completion of the action and the resolution of all issues that arise from it.
- Communication Tapes and Printouts – Audio recordings and printouts of incoming and outgoing telephone and radio communications.
 - 30 Days
 - Retention Note: Policies and procedures should be in place to identify 9-1-1 recordings with legal or historical value, and either reclassify them into the appropriate records series or retain them permanently for historical reasons.

- Dispatch Reports - Records created by the dispatcher on each call for service, showing date and time call was received, nature of the call, and details of action taken in response to call.
 - 2 Years
 - Retention Note: Prior to disposal, dispatch records shall be appraised by the records management officer for historical value, and those determined by the records management officer to merit retention for historical reasons must be retained permanently.
- Radio and Paging Logs - Listing of each radio call or page from or to a dispatcher, showing date, time, and location of the call.
 - 1 Year

Texas State Library and Archives Commission. Local Schedule PS – Retention Schedule for Records of Public Safety Agencies. Introduction

<https://www.tsl.texas.gov/slr/recordspubs/ps.html#top>

Section 1-4: Emergency Communications Records (December 8, 2016).

<https://www.tsl.texas.gov/slr/recordspubs/ps.html#s1.4>

Unit 6 Legal Liability Concepts Resources

- APCO International. Training Standards and Guidelines. Recommended Minimum Training Guidelines. (May 15, 2016) <https://www.apcointl.org/download/recommended-minimum-training-guidelines-for-the-9-1-1-telecommunicator-pdf/?wpdmdl=6363>
- YouTube. 911 Call – “Hysterical Caller” Published November 30, 2007. (Nancy McGhee Call) <https://www.youtube.com/watch?v=2rYXlbhPL-A>
- McGhee vs Pasco County (Florida 2007)

Nancy McGhee, age 37, choked to death when 911 dispatchers were unable to give her boyfriend proper instructions on how to administer emergency treatment recommended to dislodge a piece of steak.

The dispatcher, in this case, was not certified as an emergency medical dispatcher; she was required to have a supervisor assist on this type of 911 call. On two attempts, no one answered the dispatcher’s request for assistance as per agency policy. The lead communications officer refused to assist with the call. Eventually, the shift supervisor took over the call but did not provide prescribed instructions.

At the time of the incident, Pasco County dispatchers were allowed one year from their date of hire to become certified in emergency medical dispatch. This meant that if a person without training answered a medical call, the staffer needed to ask a supervisor for help. The state did not require dispatchers to have this certification at that time.

The event served as an impetus to change several of the emergency call center's policies. In Pasco County, employees now must be EMD trained before taking 9-1-1 calls, which is 24 hours of training. Additionally, the state now requires employees to undergo 232 hours of training before they can answer 9-1-1 calls.
- Ma vs City and County of San Francisco (California, 2002)

In this case, a young woman died of an asthma attack after a delayed ambulance response. The call taker – a trained paramedic – did not follow prescribed call taking procedures and delayed sending an ambulance because she assumed the patient was having a behavioral problem instead of a serious medical condition.

The Court of Appeals of the First District of California overturned a lower court and imposed liability on the city and county for failure to properly train its dispatchers. It was determined that the 9-1-1 call taker did not receive the proper training in using medical dispatch guidelines that were the established standard in the 9-1-1 center at the time.
- Gant vs. Chicago (Illinois, 2002)

A 19-year-old man died of an asthma attack while waiting for an ambulance after the patient’s mother made several attempts to contact 9-1-1. The 9-1-1 center did not answer the original call immediately. When a second call was made, as the patient’s condition deteriorated, the telephone rang 26 times with no answer at the PSAP. When the caller finally got through to 9-1-1, no CPR/resuscitation instructions were provided by the 9-1-1 operator. A jury awarded Gant’s family \$50 million. After an appeal, a new trial was ordered, and the case later settled for \$2.7 million.

A jury found the city’s 9-1-1 system neglect to be “willful and wanton misconduct” by failing to properly staff the 9-1-1 system and not properly handling the emergency call. It was subsequently revealed in court that the supervisor and two other 9-1-1 center employees

were at lunch at the time of the call, leaving the center understaffed. Minimum staffing requirements, as well as call answering performance standards, were either not in place, or not followed at the time of the call for help.

- Kazmierowski vs Chicago (Illinois, 2000)

At 7:55 a.m. on April 24, 1995, Renee Kazmierowski, suffered an asthma attack while at home at her apartment in Chicago. She called 911 to request help. She provided her address and telephone number to the 9-1-1 Telecommunicator and said that she lived on the third floor of the building. The 9-1-1 operator replied that paramedics were on the way. The operator did not attempt to keep the caller on the telephone while the paramedics were responding to the call, as was required by agency standards.

A paramedic crew responded to what they were told was a 'heart attack' victim. They were allowed into the caller's apartment building by a neighbor in the building and went to the third floor. They asked the neighbor whether he had summoned help, and the neighbor replied that he had not. The paramedics then knocked on the door of the only other apartment located on the third floor, but they received no response. The neighbor escorted a firefighter, who had also responded to the call, through his apartment to the back of the building. The firefighter knocked on the back door, but he received no response and was not able to see into the apartment. While the firefighter was checking the back of the building, the paramedics called the dispatcher, who confirmed that they were at the correct address. In response to the paramedics' questions, the dispatcher also said that the caller had not provided her age and that an attempt to return the call had reached an answering machine. The neighbor told the paramedics that the apartment was occupied by a young couple, who did not appear to have any medical problems. The paramedics concluded that they were not needed at the address in question, and they left the scene.

That afternoon, the same paramedics returned to the apartment, again in response to an emergency call. On this occasion, a man let the paramedics into the apartment, and they found Ms. Kazmierowski lying dead on the floor. The front door was unlocked.

The court determined that "locating a person in need of emergency medical treatment is the first step in providing life support services. "Not even that first step was taken here." Both the 9-1-1 dispatcher and the original paramedic crew that responded were determined to have engaged in willful and wanton misconduct. This case identifies several potential 9-1-1 policy and training failures, including staying on the line with an unstable caller who is alone, and confirming when a patient or victim has left the scene.

- Hutcherson vs. the City of Phoenix (Arizona, 1998)

On a Saturday morning, Chiquita Burt called 9-1-1 to report she feared trouble with her ex-boyfriend, Craig Gardner, who had been harassing her, threatening to kill her and her family, and was now on his way over to her current location at her new boyfriend's apartment. Burt repeatedly told the 9-1-1 operator she feared for her safety right now. The 9-1-1 operator stated she would dispatch an officer, but only as a non-emergency, routine call, to take a report. Twenty-two minutes after this call to 9-1-1, Craig Gardner broke into the apartment and fatally shot Chiquita Burt and her current boyfriend, Darryl Usher. He then killed himself. The two victims' mothers brought wrongful death actions against the City of Phoenix for its handling of the 9-1-1 call. The plaintiffs claimed that the city was liable because the operator had improperly categorized Burt's call as Priority 3, the Phoenix Police Department's lowest

rating. A superior court jury awarded the plaintiffs a total of 1.7 million dollars. The Arizona Supreme Court ultimately affirmed the superior court jury's award of damages.

The 9-1-1 operator did not properly prioritize the call, according to the jury and expert testimony. The delay in not assigning a high-priority to this case was a major cause of the victims' deaths. A lack of training in protocol use and call prioritization were major factors.

- William Clay vs City of Chicago (Illinois, 1987)

Nancy Clay, a 31-year-old production manager, died in a fire of undetermined origin while working overnight on a project for her firm on the 20th floor of One Illinois Center, a high-rise office building in downtown Chicago. "The tragedy has called into question the procedures, policies, and effectiveness of the Chicago Fire Department and has raised challenges to the capabilities of the city's emergency 9-1-1 telephone system, a lifeline for those who call the number more than 3 million times each year." After the first call, the dispatchers and dispatcher aides failed to communicate to the responding personnel relevant information regarding the conditions of the incident, the location of Nancy Clay and her predicament. After the second call the dispatchers and dispatcher aides failed to communicate to officers and firefighters on the scene that Nancy Clay was in the northwest corner of the 20th floor.

Glossary/Acronyms

Civil Liability – refers to the responsibility for debts or wrongdoing against another private party. For example, if a telecommunicator fails to advise an officer about the presence of a gun and the officer is killed on a call, the family of the officer-if the state allows-can file a civil case against the agency and/or telecommunicator.

Compensatory damages, like the name suggests, are intended to compensate the injured party for loss or injury.

Criminal Liability deals with wrongdoing against society as a whole. It means the person has committed an offense against state criminal codes.

Damages - In tort law, a remedy in the form of monetary compensation to the harmed party. Damages refer to the sum of money the law imposes for a breach of some duty or violation of some right. Generally, there are two types of damages: compensatory and punitive. (The term "damages" typically includes both categories, but the term, "actual damages" is synonymous with compensatory damages, and excludes punitive damages.)

Failure to Direct – failing to give a recruit direction for a task that they obviously do not understand how to complete

Failure to Train – agencies have an obligation to provide valid, job-related training for their recruits

Gross Negligence - A lack of care that demonstrates a reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence and can affect the amount of damages.

Liability – one of the most significant words in the field of law, liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves him/her/it open to a lawsuit for any resulting damages or a court order to perform (as in breach

of contract or violation of statute). In order to win a lawsuit, the suing party (plaintiff) must prove the legal liability of the defendant if the plaintiff's allegations are shown to be true.

Negligence - A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct). Ordinary care means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm.

Negligent Assignment – when a recruit is not transferred or suspended to a non-sensitive assignment after numerous substantiated disciplinary reports are received. Also, this deals with persons being assigned to positions that they are not properly trained or qualified for
Negligent Entrustment - entrusting a person into a position of responsibility who clearly should not have held such a position.

Negligent Hire – when a person is hired without using proper screening techniques. This involves situations when an agency is aware of the shortcomings of their prospective applicant and hires that person anyway. This affirmative link is reached only when a reasonable person is able to determine that the lack of screening was plain and obvious.

Negligent Retention (failure to discipline) – after hire, the agency becomes aware, or should have become aware, of a problem behavior and does nothing to correct it.

Negligent Supervision – FTOs must observe and correct behavior of recruits. Tolerating inappropriate behavior, such as violating or depriving people of their basic rights, make an FTO negligent in this area.

Proximate Cause - An actual cause that is also legally sufficient to support liability. Although many actual causes can exist for an injury (e.g., a pregnancy that led to the defendant's birth), the law does not attach liability to all the actors responsible for those causes. The likelihood of calling something a proximate cause increases as the cause becomes more direct and more necessary for the injury to occur.

Punitive damages are awarded to punish a wrongdoer.

Standard of Care - The degree of care (watchfulness, attention, caution, and prudence) that a reasonable person should exercise under the circumstances. If a person does not meet the standard of care, he or she may be liable to a third party for negligence.

Tort – from French for “wrong,” a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs which result in harm. Therefore, tort law is one of the major areas of law (along with contract, real property, and criminal law) and results in more civil litigation than any other category. Some intentional torts may also be crimes, such as assault, battery, wrongful death, fraud, conversion (a euphemism for theft) and trespass on property and form the basis for a lawsuit for damages by the injured party. Defamation, including intentionally telling harmful untruths about another-either by print or broadcast (libel) or orally (slander)-is a tort and used to be a crime as well.

Vicarious Liability – refers to the responsibility placed upon one person for the failure of another with whom the first person has a special relationship, such as parent and child or employer and

employee, to exercise such care as a reasonably prudent person would use under similar circumstances.