

# Police Liability

Facilitator Guide

## Session Overview

Intro & Learning Objectives	05m
Lecture – Police Liability	45m
Break	10m
Lecture – Police Liability <i>Continued</i>	50m
End of Session / Break	10m

*Total Session Time: 2 hours*

### ***Main Topics of Session:***

- *Absolute vs. Qualified Immunity*
- *Two-Part Test For Immunity*
- *Venues for Officer Liability*
- *Public Duty Doctrine*
- *Reasons that Officers and Agencies Get Sued*

### ***Facilitators Needed: 1(CP)***

***Location: Classroom***

### ***Materials Needed:***

- *PowerPoint - Police Liability*

### ***Students Should Already Have:***

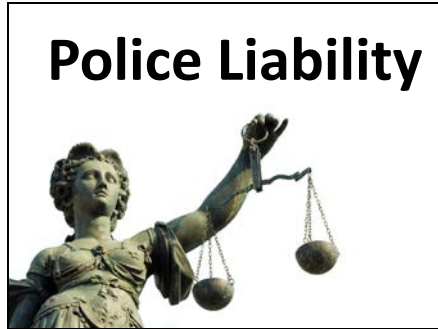
- *N/A*



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## Slide 1



## Learning Objectives

- Describe the difference between absolute and qualified immunity for police officers.
- Apply the two-part test to determine if an officer has qualified immunity.
- Explain the various venues in which an officer can be found liable.
- Define the “public duty” doctrine and how it has been developed.
- List common reasons that officers and agencies get sued.

## Slide 2

**What if we deviate?**

There is **NO absolute** immunity!

There **IS qualified or good faith** immunity

- Limited immunity
- Must be pleaded by the officer
- Two-part test:
  1. Did officer violate a clearly-established statutory or case law?
  2. Would a (different) reasonable officer have concluded your actions were reasonable?

**Police officers will not be personally liable when they “reasonably but mistakenly” arrive at a conclusion.**

- Officers only have qualified immunity if they can meet the two part test (listed on the slide.)
- You can be sued for anything anytime by anyone, even if you were acting in good faith (whether you are found liable is the question.)
- You should not be afraid to do your job and you should follow the “99 out of 100 cops rule.” No two situations are exactly the same and no one can predict the dynamic scenarios that arise in police work. As long as you are acting lawfully and within reason and do what 99 out of 100 cops would have done you will probably be fine.
- Judges and prosecutors (in most situations) do have absolute immunity.
- *Offer some personal examples of good police work where officers “reasonably but mistakenly” arrived at the wrong conclusion.*



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## Slide 3

*What if we deviate?*

The sanctions (punishments) are many and varied...

- Criminal Liability**  
»Example:
- Civil Liability**  
»Example:
- Departmental Liability**  
»Example:

Can you be found liable  
in all three venues?

- YES! You can be found liable in all three venues.
- *Give an example of a situation involving an officer (without giving a name or department) that illustrates this point.*
- *Discuss the term “contempt of cop” and how that relates to liability.*

## Slide 4

*“Public Duty” Doctrine*

**The idea that a duty to the general population does not create a duty to any one individual.**

- Court-created doctrine intended to protect the government from lawsuits
- No statute or formalized court rule setting forth this common law doctrine
- Been developed by the courts case-by-case.
- Was there a Duty Owed ?
- EXAMPLE: The police generally can't be sued for mistakes they make in failing to catch a murderer before he kills again.

- The public duty doctrine is a court-created doctrine to protect the police from liability
- Another example: The 10-year investigation of the Green River killer.



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## Slide 5

### What if we deviate?

- Police liability arises from police negligence.
  - Do we have a **duty owed?**
    - Examine the "Public Duty Doctrine".
  - Do we have a **duty breached?**
    - Covers all acts and omissions.
  - Were **actual damages suffered?**
    - Was the duty breached the **proximate cause** for the damages suffered?

### Suggestions to illustrate the slide:

- When the public calls 9-1-1 they expect the police to respond.
- Examples:

Elderly person not seen in a week.....**Duty Owed**. You have a duty to investigate. Upon arrival the officer knocks on the door receives no response and does nothing else to investigate .....**Duty Breached**. Failure to do a thorough job. Later that day a family member finds them dead in their house. An autopsy shows the person died over hours from internal bleeding received from a fall.....**Actual Damages Suffered**. Result is lawsuit and liability.

Officers responding to domestic violence assault where probable cause is developed and officers fail to make a custodial arrest. As a result of the duty breached the victim sustains further injury by the suspect who should have been booked into jail.

Obvious DUI you see during a bar check who you have arrested several times before for DUI and their car is parked in the lot. Discuss an officers lawful options. Discuss why it is important to know what you can and cannot do with that person. This usually results in a good discussion with new officers about their lack of authority in these types of situations but their community caretaking function and how they should manage situations to reduce liability.



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## Slide 6

### Why Do We Get Sued?

<u>The officer...</u>	<u>The agency...</u>
- excessive force	- negligent hiring
- lousy driving	- negligent retention
- boot the wrong door	- failure to train
- arrest the wrong person	- improperly training
- arrest the right person without PC	- failure to supervise
- your dog bit someone	- condoning sexual or racial harassment
- harassment	- failure to treat employees equally.

## Slide 7

### What's the Bottom Line?

- We in law enforcement can often be our own worst enemy!
  - Think before you act.
  - Think before you speak.

**Is my action:**

- ✓ Reasonable?
- ✓ Necessary?
- ✓ Legal?
- ✓ Within Dept. Policy?

- *Emphasize the importance of knowing criminal procedure and case law because it is ever changing.*



BREAK/END OF SESSION

