COMMUNITY RESPONDER LIABILITY

Amos Irwin

with research by
Kurt Gosselin and Akerman LLP

LAW ENFORCEMENT ACTION PARTNERSHIP
ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

Acknowledgements

LEAP would particularly like to thank Akerman LLP for the pro bono research team who made this project possible: Kurt Gosselin, Joel Forman, Keenan Molaskey, Amanda Spector, and Samuel Vitello. We gratefully acknowledge our partners who helped provide guidance and feedback throughout this project, including invaluable assistance from Jay Fisher, Sofia Hernandez, Katherine Chu, and Lisa Tennenbaum, as well as significant contributions from Mari Bayer, Jackson Beck, Dan Bodah, Rachel Bromberg, Tahir Duckett, Rachael Eisenberg, Andrew Hand, Krystan Hitchcock, Peter Honnef, Jared McClain, Yvette McDowell, Sofia Medina, Nick Morrow, Aloka Narayanan, Scarlet Neath, Claire Ryder, and Gabriela Solis Torres. They provided many rounds of feedback and guidance that greatly improved this report. They are not responsible for any errors or omissions still present in the document.

Disclaimer

This report is intended only as guidance and does not constitute legal advice. The authors have attempted to make it as generally applicable and current as possible, but it is not comprehensive and it will not be regularly updated to reflect changes in law. City officials should consult with their own attorneys for authoritative legal advice.

AMOS IRWIN
LAW ENFORCEMENT ACTION PARTNERSHIP

MAY 2024

Executive Summary

To allow police to focus on serious crime, many cities are no longer dispatching officers to many low-risk 9-1-1 calls, such as disturbances, welfare checks, and verbal disputes. Instead, they now send unarmed “community responder” teams. Some city officials have wondered if, by sending these teams, cities could be increasing their legal liability risk.

To assess liability risk, we reviewed case law and statutes from the federal system as well as all 50 states related to first responders handling low-risk calls. We did not find any statutes specifically governing community responder programs or lawsuits related to harm caused by community responder programs.

By reviewing cases and statutes related to other first responders, we identified and investigated four sources of first responder liability:

1

State law tort claims (negligence): While each state has slightly different rules, most states follow a general pattern. They provide absolute immunity for first response policy decisions, such as the creation of a program or policy to dispatch different types of responders to certain call types. They also provide absolute immunity for failure to prevent harm caused by a third party, except in extremely rare circumstances. In most states, cities are liable for negligent vehicle operation by first responders, while most other types of harm typically require a minimum of grossly negligent conduct for liability. In the rare case that a responder causes harm with malice, most states hold the individual rather than the city responsible. In sum, cities primarily face tort liability for negligent vehicle operation and harm caused by gross negligence.

Would a city increase or decrease its tort liability risk by sending community responders to low-risk calls formerly handled by police? Since community responders rarely use force, they are significantly less likely to cause harm. For the same reason, they might be more likely to fail to prevent a third party from causing harm. Since cities face tort liability risk for the former but almost no liability risk for the latter, we conclude that by dispatching community responders, cities would reduce their overall tort liability risk.

2 **Federal constitutional claims:** Cities most often face liability for excessive use of force. While injured parties generally have to sue the individual officer rather than the city, the city almost always indemnifies the officer. As a result, we conclude that by dispatching community responders, cities would reduce their overall risk from federal constitutional claims.

3 **Federal statutory claims**: For first responders handling low-risk calls, we found few relevant statutes or claims. Multiple cities are facing claims that they are violating the Americans with Disabilities Act (ADA) because they are discriminating on the basis of disability by dispatching police to handle mental health calls. If such claims succeed, cities could reduce their liability exposure for federal statutory claims by sending community responders to low-risk calls.

4 **Workers' compensation claims**: Evidence shows that police file workers' compensation claims at high rates, often related to situations in which they used force. Since community responders are far less likely to use force, we expect them to experience fewer workers' compensation claims. However, we were unable to determine if a significant share of police claims stemmed from the types of low-risk calls that community responders handle.

In sum, we conclude that by sending community responders to low-risk calls in place of police, cities **reduce** their overall liability risk. If a city official blocks a community responder program due to liability concerns, they are likely forgoing an opportunity to reduce the city's liability exposure.

We close by examining how cities can protect themselves from community responder liability risk:

1 **Policies and training:** To minimize risk, cities should write clear protocols and train responders to follow them. Cities do not assume additional liability from policy-making. By documenting policies that guide responder dispatch and actions, cities reduce their liability risk by minimizing the likelihood that a responder's actions might constitute gross negligence**.**

2 **Insurance**: The program creators should communicate early and often with the city's risk manager to discuss the need to purchase additional insurance coverage.

3 **Contracts**: Some cities have chosen to contract with local service providers to staff and operate their community responder teams. These cities should take care to define the scope of work and clarify liability responsibility in their contracts. They should verify that the contractor carries sufficient liability coverage.

Table of Contents

Introduction

All across America, police are the default responders for most 9-1-1 calls. Many of these calls are related to low-risk conflict resolution and behavioral health issues.[1] When these calls fall on the police's shoulders, officers are forced to act as mediators and counselors, and they risk using force in an escalating situation. In order to allow police to focus on reducing and solving crime, and to provide responders specially trained to de-escalate situations and connect people to care, cities are beginning to dispatch unarmed teams of "community responders" instead of police.[2] Every month, new cities are launching and expanding community responder programs, from Albuquerque, NM to St. Petersburg, FL.

As we have met with cities and counties[3] to discuss the benefits of community responder programs from a public safety perspective, some local officials have raised concerns that community responder programs might increase their municipality's liability risk. They ask questions such as: What if the responder injures a member of the public? What if a responder is sent to a call that escalates into violence or property damage? What if the responder gets injured? We hope that this document will help policymakers and other stakeholders take steps to understand and mitigate liability risks posed by a community responder program.

[1] By "low-risk," we are referring to situations that do not involve weapons, violence, or emergency medical needs.
[2] We define "community responders" as unarmed teams dispatched as first responders to 9-1-1 calls. This report does not cover other alternative response programs, such as co-responders, quick response teams, or deflection and diversion programs.
[3] We use "city" throughout to refer to any municipal organization, since most community responder programs have been created by cities. Counties and other municipal subdivisions operate in a substantially similar way.

In this report, when we say "liability risk," we focus on the likelihood of a city facing a substantial settlement, judgment, or other costs as a result of a lawsuit in civil court. Cities are concerned about creating any new program that could cause harm and end up costing them increased payouts.

While city officials often talk about liability risk in general, the sources of risk are discrete and specific. When someone sues a city, they must identify the specific legal duty that the city has violated. They must then show that by violating that duty, the city has caused them harm.[4]

As a result, this report begins by explaining the three most likely sources of liability risk for city first response systems: state tort (negligence) claims, federal constitutional violations, and responder injury claims.[5]

When analyzing each of these sources, we compare the liability risk of community responders to that of traditional first response. Every city already faces substantial liability risk from its existing first response system. When cities assess the liability risk of any new program, they should compare it not to zero but to the existing liability risk of the status quo.

We close by discussing steps that cities take to protect themselves from community responder liability: providing strong policies and training, purchasing adequate insurance, and crafting contracts carefully.

[4] Once in civil court, the person suing the city does not have to prove as high a burden of proof as in a criminal case. While a prosecutor in a criminal case must demonstrate guilt "beyond a reasonable doubt," a plaintiff in a civil case only needs the jury or judge to find "preponderance of the evidence." In other words, the plaintiff will have to prove that it is more likely than not that the city was responsible for the harm suffered by the plaintiff.
[5] Cities may also face other sources of liability, such as state constitutional claims.

State Law Tort Claims

State law allows cities wide latitude to determine their first response priorities and strategies, rarely dictating exactly how dispatchers and first responders must do their jobs. As a result, cities rarely face lawsuits for violating specific enumerated first responder responsibilities.

However, first responders can bring about lawsuits for causing personal injuries; these civil lawsuits are known as torts or tort claims. Tort claims can be either unintentional torts – caused by negligence – or intentional torts, for deliberate harm like assault. We discuss tort claims at length, because we consider them the likeliest source of lawsuits related to community responder programs.

Private individuals and companies often face tort claims. Doctors, drivers, and employers are required to purchase liability insurance to cover the cost of unintentional torts resulting from medical malpractice, car accidents, and workplace injuries.

Unlike private individuals and companies, cities enjoy special protections against tort lawsuits under state law. States technically have the power to extend “sovereign immunity” to cities, shielding them from all tort claims. In practice, cities at best enjoy partial immunity. Most state legislatures have passed a “tort claims act” that allows injured parties to sue cities under certain circumstances, with restrictions and limitations. In states without a tort claims act, injured parties can often sue cities

under common law.[6]

State law generally protects first response systems against tort claims because they involve a governmental rather than proprietary function. States tend to allow lawsuits for proprietary functions, in which the city is providing a service generally offered by private companies. States offer special protections when cities are providing governmental functions, which are services traditionally run by governments rather than the private sector.[7] Courts generally agree that 9-1-1 first response, as well as police and fire services in general, is a "quintessential" governmental function.[8]

We conducted research into statutes and case law across the fifty states, since the rules for tort lawsuits depend on each state's tort claims act and case law history.[9] We found that in most states, cities' tort liability for first responders is primarily shaped

---

[6] While state laws are passed by legislators, common law is built on judicial precedent. When one judge writes a ruling, other judges begin to follow that ruling as a guide for how to interpret the law or fill in the gaps in law. As judges build more and more rulings on top of past precedent, they form doctrines that have become known as "common law." While they are not statutory law, they carry equal force and guide many legal decisions, for example establishing when an injured party can sue a city for negligence.

[7] See for example Sebastian v. State of NY, 720 NE 2d 878 - NY: Court of Appeals 1999.

[8] See for example *Applewhite v. Accuhealth Inc.*, 995 NE 2d 131 - NY: Court of Appeals 2013, and *Valdez v. City of New York*, 960 NE 2d 356 - NY: Court of Appeals 2011.
While community responders do not generally provide emergency medical assistance, note that we did find three cases suggesting that 9-1-1 emergency medical response in particular may not qualify as a governmental function in certain states. See:
Norg v. City of Seattle, No. 100100-2 (Wash. 2023) (Washington employs a statutory scheme that holds cities to the same ordinary tort liability as a private individual. Still, cities generally enjoy a public duty protection from liability for uniquely governmental duties that are not done by private individuals and that are imposed on a city by a specific statute, such as providing police protection. Here the court held that once the city undertook the 9-1-1 call and agreed to provide assistance, it was not providing a governmental duty required by statute. Since "emergency medical assistance is not a unique function of government," the ordinary negligence standard applicable to a private person rendering aid also applied to the city.)
Berkowski v. Hall, 282 NW 2d 813 - Mich: Court of Appeals 1979 (Michigan applies a "governmental essence" test to determine whether an act is a governmental function. Applying that test to the facts of this case, the court held that the operation of the subject EMS unit is not a governmental function.)
Curiel v. Hampton Cnty. E.M.S., 401 S.C. 646, 651, (Ct. App. 2012) ("By including police and fire protection as exceptions to the State's waiver of immunity, but not specifically listing emergency medical services, the Legislature did not intend to include emergency medical services as an exception to the waiver of immunity.")

[9] For a state-by-state guide to cities' tort liability that is not specifically focused on first response systems, consult legal counsel or see the 50-state chart compiled by Matthiesen, Wickert & Lehrer, S.C., available at https://www.mwl-law.com/wp-content/uploads/2013/03/MUNICIPAL-COUNTY-LOCAL-GOVERNMENTAL-LIABILITY-CHART-00212510.pdf.

by common law. Even in states with more detailed liability statutes, legislators often based the statutes on existing common law, intending to more clearly define common law rather than to alter it.[10] As a result, in nearly all states, tort liability for first response systems shares common features.

In the following sections, we describe these common features. We document common features to help orient the reader, not to oversimplify the issue by suggesting that fifty different bodies of law follow a single cookie-cutter approach. Each state has a unique body of law, in which key differences are often defined by both statute and individual court decisions. To fully understand the law in a specific state, cities should consult with their attorneys, who should conduct further research into that state's case law history. In order to assist in such research, in Appendix 1 we present our initial findings of how individual states deviate from these common features.

Policy-Making

The law generally protects cities and city officials against tort liability for policy-making. In most states, either common law or statute provides absolute immunity for discretionary policy-making acts, in which a city official is creating policy to guide operations.[11] States do not guarantee absolute immunity for discretionary operational acts, in which a city employee is carrying out day-to-day operations, such as providing a direct service.[12]

Accordingly, the directors of community responder programs and 9-1-1 call centers would generally enjoy absolute immunity for their policies. For example, program directors collaborate with 9-1-1 call centers to write dispatch protocols, which dictate which call types should be sent to community responders. If someone sued the city for sending community responders rather than police to a call, but the dispatcher's actions were in line with the dispatch protocol, the city should benefit from

[10] For example, in Massachusetts, when the state's supreme court abolished the public duty rule, legislators responded by amending the Tort Claims Act (MTCA). See *Ford v. Town of Grafton*, 693 N.E.2d 1047 (App. Ct. 1998).
[11] For example, in Illinois, Article II of the Tort Immunity Act provides absolute immunity for harm caused by city staff setting flawed policy. 745 ILCS 10/2-201.
[12] See for example *Chambers-Castanes v. King County*, 669 P. 2d 451 - Wash: Supreme Court 1983.

policy-making immunity.[13] This immunity should also cover their policy decisions on how to conduct training.[14]

Failure to Prevent Harm

When it comes to actions on the street, common law generally protects cities from liability if first responders fail to prevent harm by a third party. One might expect that when someone calls 9-1-1 for help, first responders have a duty to protect that person. However, under traditional common law tort principles, for person A to prevail on a tort claim against person B, the case must pass a four-part test:

1. Person B had a duty toward person A,
2. Person B breached that duty,
3. Person A suffered an injury, and
4. Person B's breach of duty caused Person A's injury.

The first part of this test often shields first responders from liability for failing to prevent harm, by application of a "public duty rule" for governmental action: responders only have a public duty to assist the overall community, not a special duty to assist the individual caller or victim.[15] As a result, courts consistently hold that

[13] We do not expect lawsuits to focus on the decision of which responder to send. We did not identify any tort claims in which a city was sued for sending police rather than EMS, or vice versa. Policy-making immunity should protect responders who follow policy, unless the policy instructed them to do something they knew to be against the law.

[14] For case law holding that training decisions are immune from tort liability, see *Morris v. Blake*, 552 A.2d 844 (Del. Super. Ct. 1988).

[15] Legal duties stem from specific sources: statute, contract, relationship, land ownership, voluntary assumption of responsibility, creation of danger, and responsibility for rescue. Police can establish a duty if they use force to detain a person or otherwise endanger them. As described in *Warren v. District of Columbia*, 444 A. 2d 5 - DC: Court of Appeals 1981, courts have found that police established a special duty by taking actions that created danger, including:
Schuster v. City of New York, 5 N.Y.2d 75, 180 N.Y.S.2d 265, 154 N.E.2d 534 (1958) (Police assumed a special duty to a confidential informant by seeking an informant to come forward.)
Gardner v. Village of Chicago Ridge, 71 Ill.App.2d 373, 219 N.E.2d 147 (1966). (Police assumed a special duty by arranging a confrontation between a suspect and a witness to a crime.)
McCorkle v. City of Los Angeles, 70 Cal. 2d 252, 74 Cal. Rptr. 389, 449 P.2d 453 (1969). (Police assumed a special duty when investigating a traffic accident by leading the plaintiff into the middle of the highway, where the plaintiff was then struck by another car.)

responders[16] do not have a duty to prevent harm caused by a third party. Even when police have failed to take simple action to prevent harm to callers in life-threatening situations, courts have refused to find police negligent because they owed no special duty toward the individual caller.[17] We have identified two exceptional cases in which courts found that cities were liable for dispatchers or responders failing to prevent harm because based on the particular facts in those cases they had established a

[16] When cities contract with community responders rather than hiring them as employees, whether the public duty rule still applies to the contractors may vary from state to state depending on whether the state considers the nature of the function provided or applies a specific definition of employee. In North Carolina, for example, "the general rule is that there is no duty to protect others against harm from third persons," unless a "special relationship" exists between the parties. *King v. Durham County Mental Health Auth.*, 113 N.C. App. 341 (1994). As discussed above, whether responders are contractors or not, they are performing a governmental function. See for example *Applewhite v. Accuhealth Inc.*, 995 NE 2d 131 - NY: Court of Appeals 2013, and *Valdez v. City of New York*, 960 NE 2d 356 - NY: Court of Appeals 2011.
While community responders do not generally provide emergency medical assistance, note that we did find three cases suggesting that 9-1-1 emergency medical response in particular may not qualify as a governmental function in some states. See:
Norg v. City of Seattle, No. 100100-2 (Wash. 2023) (Once the city undertook the decision to provide an emergency medical response, it was no longer covered by the public duty rule because "emergency medical assistance is not a unique function of government," and because, by statute, only governmental duties created by statute enjoy public duty immunity.)
Berkowski v. Hall, 282 NW 2d 813 - Mich: Court of Appeals 1979 (Michigan applies a "governmental essence" test to determine whether an act is a governmental function. Applying that test to the facts of this case, the court held that the operation of the subject EMS unit is not a governmental function.)
Curiel v. Hampton Cnty. E.M.S., 401 S.C. 646, 651, (Ct. App. 2012) ("By including police and fire protection as exceptions to the State's waiver of immunity, but not specifically listing emergency medical services, the Legislature did not intend to include emergency medical services as an exception to the waiver of immunity.")
[17] Courts have refused to find a special duty even when 9-1-1 staff promised to send the police in a timely manner and then entirely failed to send them, or they sent them late and then police made serious errors that prevented them from saving a life. See for example:
Riss v. City of New York 22 NY 2d 579 - NY: Court of Appeals 1968.
Cuffy v. City of New York, 69 NY 2d 255 - NY: Court of Appeals 1987.
Laratro v. City of New York, 8 N.Y.3d 79, 82, 861 N.E.2d 95, 96 (2006).
McCuiston v. Butler, 509 S.W.3d 76 (Ky. Ct. App. 2017).
Fried v. Archer, 775 A. 2d 430 - Md: Court of Special Appeals 2001.
Note that police can establish a duty if they use force to detain the person or otherwise put them in danger. See for example *Warren v. District of Columbia*, 444 A.2d 1, 5 (D.C. 1981) (discussing cases where police affirmative conduct led to the creation of a special duty, but ultimately finding on the facts of the case that no special duty was owed to the plaintiffs).

special duty to the caller.[18] Some states have replaced the public duty rule with statutes specifying the scope of responder duty, though generally these statutory schemes track the general approach of immunity for failure to prevent harm absent special circumstances.[19]

In sum, barring exceptional circumstances, we do not expect cities to face additional tort liability for failure to prevent harm.

Intentional Torts

At the other extreme, in the unlikely case that a responder intentionally causes harm, their actions would generally create personal liability as an individual rather than liability for the city. If the responder is acting in bad faith or outside the scope of their employment, common law or statute would shield the city from liability, requiring that the injured party sue the individual rather than the city.[20] For example, Maryland

[18] In *DeLong v. County of Erie*, 89 A.D.2d 376, 455 N.Y.S.2d 887 (N.Y. App. Div. 1982), the court found that the city had established a special duty by (i) advertising a new 9-1-1 number where residents could reach police, (ii) promising the caller to send an officer right away, (iii) failing to send the police at all, and (iv) understanding that the caller was choosing to risk death to wait for them due to their promises.
In *St. George v. City of Deerfield Beach*, 568 So. 2d 931 (Fla. 4th DCA 1990), the court found a special relationship could exist where responders (i) answered a 911 call by the decedent regarding an emergency medical situation but where decedent refused treatment, (ii) left the scene and assured the decedent that they would return if the situation worsened, and (iii) failed to return (because of the operator's negligence) when the decedent later called again.
[19] For example, see Illinois' Tort Immunity Act: 745 ILCS 10/2-204. Massachusetts' MTCA provides similar immunity, specifying that responders can create a special duty if they make "explicit and specific assurances of safety or assistance, beyond general representations that investigation or assistance will be or has been undertaken... to the direct victim or a member of his family or household." G. L. c. 258, § 10(j)(1). Alaska deviates from the pattern here, in that the Alaska Supreme Court abolished the public duty rule in favor of a more "ad hoc" approach to determining if responders have established a duty to the injured party. That said, the Alaska ad hoc approach has only established a duty to prevent harm in extreme circumstances similar to those that established a special duty in *DeLong*. In *Kotzebue v. McLean*, 702 P.2d 1309 (1985), the Supreme Court affirmed a jury verdict holding the city liable for police failure to intervene where a police officer (i) received a life-threatening call, (ii) knew the identity of the potential assailant, (iii) was able to identify the likely crime scene, (iv) failed to follow police procedure to investigate, and (v) failed to ask another available officer to investigate.
[20] For an example in statute, see Massachusetts, where G. L. c. 258 § 10(c) holds municipal employees personally liable for intentional torts, even if committed within the scope of their employment. See *Cordero v. Pack* 368 F.Supp.3d 137 (S. Mass. 2019) or *Spring v. Geriatric Authority of Holyoke*, 394 Mass. 274 (1985).

statute shields cities from lawsuits for city employees' acts committed either with malice or outside the scope of their employment.[21]

Even if a city employee is sued as an individual for bad-faith actions, the city may step in to provide for defense counsel and pay the legal fees, judgment, or settlement. In some states, statute often prohibits cities from indemnifying their employees for intentional torts. In other states, cities pass resolutions or ordinances barring indemnification.[22] However, research shows that in practice, cities may end up paying even where the law forbids it. For example, cities almost always indemnify individual police officers in civil rights cases.[23]

Vehicle Operation

States often explicitly define liability for city employee vehicle operation in their tort claims acts, vehicle driving codes, or both.

Driving is exceptional in that many states provide no liability protection whatsoever for city employees' traffic collisions. For example, Maine and Michigan statutes clearly indicate that cities can be held liable for their employees' vehicle operation at a standard of ordinary negligence.[24] In Massachusetts, cities are explicitly liable for negligent driving by police and fire emergency vehicles.[25]

Some states raise the liability standard to gross negligence in the case of first responders driving to an emergency call. In Illinois and South Dakota, statute immunizes public employees against claims that they operated a motor vehicle negligently while responding to an emergency call unless the injured party can

---

[21] See *Wolfe v. Anne Arundel County*, 374 Md. 20, 30 (2003). Md. Code, Cts. & Jud. Proc. § 5-302 requires cities to immunize public employees unless they act maliciously or outside the scope of their employment. The court interprets this statute to mean that cities are immune from their employees' malicious acts.
In Michigan, the Supreme Court held that intentional torts are by definition outside the scope of a governmental function. *Lockaby v Wayne County*, 406 Mich 65; 276 NW2d 1 (1979).
[22] See for example Durham, North Carolina's "Resolution Establishing Uniform Standards under Which Claims or Civil Judgements Sought or Entered against City Officers and Employees May Be Paid."
[23] Joanna C. Schwartz, "Police Indemnification," *New York University Law Review* Vol. 89 No. 3, June 2014, accessed at https://www.nyulawreview.org/issues/volume-89-number-3/police-indemnification/.
[24] *See, e.g.*, Maine Rev. Stat. Title 14, § 8104-A; Mich. Compiled L. 691.1405.
[25] See G. L. c. 258 § 10(g) for fire vehicle operation and G. L. c. 258 § 10(h) for police vehicle operation.

demonstrate "willful or wanton conduct."[26] In some of these states, this protection only applies to emergency vehicles, which would not cover community responders.[27]

Vehicle operation is the most likely cause of harm by community responders, since they rarely use force within the scope of their employment.[28] Compared to other first responders, some evidence suggests that community responders may be less likely to cause traffic collisions. Police, fire, and EMS are often called on to run red lights and otherwise ignore traffic laws. Research shows that when driving in "lights and sirens" emergency mode, they are more likely to cause a traffic collision.[29] Community responders are always required to obey the normal rules of the road, and thus would likely cause fewer collisions.

If community responders cause an accident, they could potentially harm not only another driver but also a passenger in their own vehicle. They may transport individuals to an outpatient clinic, homeless shelter, stabilization center, or another location providing resources. In all of these scenarios, the passenger would give them verbal consent; responders would not transport anyone against their will.[30] As discussed in the Insurance section below, all such driving-related liability for community responders should be covered by the city's auto insurance.

---

[26] For Illinois, see 745 ILCS 10/5-106. The Illinois Supreme Court established in *Harris v. Thompson* that in the case of public employees providing emergency response, this section of the Tort Immunity Act prevails over sections 11-205 and 11-907 of the Illinois Vehicle Code. *Harris v. Thompson*, 2012 IL 112525, ¶ 25 (2012).
In South Dakota, the Good Samaritan statute explicitly includes the operation of a motor vehicle in connection with providing "any emergency care and services" within its limitation on liability. *See In re Certification of a Question of Law from United States Dist. Court, Dist. of S. Dakota, S. Div.*, 779 N.W.2d 158 (2010) (holding immune from liability the act of a volunteer firefighter driving his personal vehicle in response to an emergency fire call unless conduct giving rise to the injury was "willful, wanton, or reckless").

[27] In New York, see *Anderson v. Commack Fire Dist.*, 39 N.Y.3d 495, 502 (2023) (A city will not be held liable for an accident caused by a firefighter driving an emergency vehicle unless caused due to reckless disregard under NY Vehicle and Traffic Law.)

[28] Community responder teams generally do not use force at all. However, a few community responder teams are involved in conducting involuntary commitments, which may technically involve legal use of force. To err on the side of caution, we acknowledge that community responders may use force in rare situations. Compared to police, their use of force is vanishingly rare.

[29] Celestin Missikpode et al., "Does crash risk increase when emergency vehicles are driving with lights and sirens?" *Accident Analysis & Prevention* Vol 113, 2018, 257-262.

[30] A few programs transport patients for involuntary commitments. They should consult with the city's risk manager to determine if their auto insurance would cover liability for a patient being involuntarily transported.
For voluntary transports, some program planners recommend that the responders have the rider sign a waiver.

Gross Negligence

Outside of vehicle operation, state law generally requires that a plaintiff harmed by a city's first response operations meet a standard of gross rather than ordinary negligence. Statutes and case law generally shield cities' governmental acts from liability for ordinary negligence, but they commonly include exceptions for acts that are reckless, wanton, or grossly negligent.[31] These terms generally share a similar definition: not intending to cause harm but *entirely* ignoring the likelihood of harm and failing to use *any care whatsoever* to avoid harm.[32] These terms set a high bar, since plaintiffs are hard-pressed to prove that city employees failed to exercise not just reasonable care but *any care at all*.[33] Considering that the cases we found involving gross negligence by police involve their use of force, and that community responders rarely use force, we expect that dispatching community responders rather than police to low-risk calls would be less likely to lead to actions that rise to the level of gross negligence.[34]

Different states allow different degrees of city liability for gross negligence.

Some states treat gross negligence the same way as malicious acts, requiring the plaintiff to sue the employee as an individual. For example, Massachusetts statute

---

[31] As discussed in footnote 8, while states generally regard first response operations as a governmental function, in a few states that diverge from the norm in statutes or case law, courts have held that emergency medical response services (but not police services) are a proprietary (non-governmental) function.

[32] For example, the Illinois Supreme Court has found that to meet the "willful or wanton misconduct" standard, conduct must at least demonstrate "utter indifference to or conscious disregard for a person's own safety or the safety or property of others." *Pfister v. Shusta*, 167 Ill. 2d 417, 421-22 (1995).
Some states consider wanton conduct to be an even higher standard than gross negligence. *Carlisle v. White*, 545 F.Supp. 463 (D.Del.1982).

[33] See for example *Eastburn v. Regional Fire Protection Auth.*, in which California courts found that 9-1-1 dispatchers were not grossly negligent despite causing permanent, debilitating injuries to an infant by "fail[ing] to dispatch emergency personnel with emergency equipment." *Eastburn v. Regional Fire Protection Auth.* 98 Cal.App.4th 426, 119 Cal. Rptr. 2d 655 (Cal. Ct. App. 2002).
In Michigan, the court ruled that 9-1-1 dispatchers were at most negligent when they assigned an inappropriately low priority level to an urgent call and then waited for over an hour to dispatch police. *Trezzi v. City of Detroit*, 120 Mich. App. 514 (1982).

[34] For example, police have faced gross negligence lawsuits for using excessive force, failing to properly secure a detainee during transport, and for failing to arrest a drunk driver. See:
Richmond v. Swinford, No. 2:12-CV-243 RM, 2012 WL 5903808, at *4 (N.D. Ind. Nov. 26, 2012)
Morris v. Blake, 552 A.2d 844, 848 (Del. Super. Ct. 1988), aff'd sub nom. *Sussex Cnty., Del. v. Morris*, 610 A.2d 1354 (Del. 1992)
Turner v. City of Ruleville, 735 So. 2d 226, 230 (Miss. 1999)

holds individuals rather than cities liable not only for malicious and willful acts but also for grossly negligent acts.[35] West Virginia statute holds individuals rather than cities liable for wanton or reckless acts.[36]

Other states hold cities liable for their employees' grossly negligent acts. In Wisconsin, common law allows plaintiffs to hold cities responsible if they can prove that a city employee deliberately ignored an obvious and hazardous danger.[37] In some states, exceptions are written into statutes related to specific types of agencies. The Maryland Fire and Rescue Company Act allows plaintiffs to sue fire departments for gross negligence.[38] In Indiana and Illinois, emergency telecommunications statutes allow gross negligence lawsuits against 9-1-1 call centers.[39]

Regardless of whether gross negligence liability falls on individuals or cities, few plaintiffs are able to demonstrate gross negligence in 9-1-1 first response outside of police use of force and EMS medical care. We did not identify any cases in which courts ultimately concluded that individual actions by call center staff or unarmed responders were the cause of harm to a plaintiff and were grossly negligent.[40]

States also have other statutes that may create liability for certain types of actions, generally at a standard of gross negligence. We review two actions relevant to

---

[35] Other states have similar statutory language, such as Illinois (745 ILCS 10/2-204, 208), Massachusetts (G. L. c. 258, §§ 8-9), and West Virginia (W. Va. Code § 29-12A-5).
[36] W. Va. Code § 29-12A-5.
[37] See for example *Bauder v. Delavan-Darien School District*, 207 Wis. 2d 315. As described in Wis. Stat. § 893.80: "To apply, the danger must be so clear and absolute that taking corrective action falls within the definition of a ministerial duty. Expert testimony of dangerousness is not sufficient to establish a known present danger."
[38] Md. Code, Cts. & Jud. Proc. § 5-604(a)
[39] In Indiana, statute uses the phrase "willful or wanton misconduct." In Illinois, statute uses "gross negligence" and "recklessness." See IN Code § 36-8-16.7-43 (2022) and 50 ILCS 750/15.1.
[40] We did find two cases that survived summary judgment. In both cases, the court's ruling hinged on systematic failures to address recurring problems rather than the individual incident in isolation.
First, in one Indiana case, the court determined that whether a 9-1-1 call center committed wanton misconduct was a genuine question of material fact, largely since the city's 9-1-1 system had a pattern of unaddressed prior reported problems. The court refused to dismiss the case at summary judgment and allowed it to proceed to trial, where the jury found in favor of the municipality. *Howard Cnty. Sheriff's Dep't & Howard Cnty. 911 Commc'ns v. Duke* 172 N.E.3d 1265, 1270 (Ind. Ct. App. 2021)
Second, in an unpublished opinion, a Connecticut court permitted a case to survive summary judgment where a dispatcher failed to send a responder to investigate a 911 call in clear violation of established 911 procedures. The case turns on the city's "wholesale failure to provide any training to its dispatchers" but appears to have been complicated by the city's failure to provide evidence on summary judgment, the reason for which is unclear from the decision. *Gebo v. McDonald*, No. MMXCV095006226S, 2010 WL 4277743, at *3 (Conn. Super. Ct. Oct. 8, 2010).

community responders: providing emergency medical care and reporting domestic violence.

Medical Care

In an emergency, first responders might attempt to provide medical care beyond their training. Community responders facing a medical emergency would generally summon EMS rather than providing potentially harmful care themselves. However, in a true emergency, they might attempt to provide care while waiting for EMS to respond, and their mistakes could cause harm.

In most states, responders would be covered for good faith efforts to provide emergency care. All 50 states provide some immunities for volunteer emergency medical care via Good Samaritan statutes.[41] Good Samaritan laws generally protect not just city employees but any person who provides volunteer emergency assistance, unless they commit willful or wanton misconduct.[42] These laws protect the Good Samaritan even when they provide assistance other than medical care.[43] However, if responders possess medical licenses, state law might allow lawsuits for malpractice or licensing consequences.[44]

Failure to Report Domestic Violence

In general, first responders are not liable for failure to prevent harm by a third party. However, we identified one narrow exception potentially related to community responders – several states have statutes requiring first responders to report evidence of domestic violence.[45] If a first responder failed to report evidence of domestic violence and that failure contributed to a subsequent injury, the injured

---

[41] B. West and M. Varacallo, "Good Samaritan Laws," Updated Sept 12, 2022. StatPearls Publishing, Treasure Island (FL). Available at https://www.ncbi.nlm.nih.gov/books/NBK542176/
[42] In a few states, Good Samaritan laws only protect medical professionals. See state-by-state detail in *Carter v. Reese*, 148 Ohio St.3d 226, 2016-Ohio-5569, ¶ 21.
[43] See state-by-state detail in *Carter v. Reese*, 148 Ohio St.3d 226, 2016-Ohio-5569, ¶ 22.
[44] In some cases, liability may depend on responders' credentials. In North Carolina, for example, EMTs are generally protected against ordinary negligence claims, and the injured party would have to demonstrate gross negligence. However, professionals with a more advanced license, such as paramedics, can be sued for negligence. Even if the responder faces no legal liability, they could potentially lose their medical license. Also, to employ EMTs, North Carolina cities need to hire a medical director, who would have the power to shut down the program if they found systematic breaches of EMT protocols.
[45] States may also mandate reporting of child abuse and neglect.

party could potentially sue. However, the lawsuit would depend on the state statute and would often require gross negligence.

In Illinois, for example, the Domestic Violence Act requires any officer investigating an incident of domestic abuse, neglect, or exploitation to file a written report.[46] If Illinois police failed to report domestic violence and that failure contributed to a later injury, the Act allows the injured party to sue, albeit only if they could demonstrate "willful or wanton misconduct."[47] Even though the Domestic Violence Act only mentions sworn law enforcement, the Illinois Supreme Court ruled in *Schultz v. St. Clair Cnty.* that the legislature also intended it to apply to 9-1-1 call center staff.[48] As a result, if 9-1-1 staff heard or observed evidence of domestic violence and caused harm by *willfully or wantonly* failing to report it to police, they could expose the city to liability under the Domestic Violence Act.

Still, just because a state statute requires first responders to report domestic violence does not mean it exposes the city to liability. In Massachusetts, the domestic violence statute, General Laws Chapter 209A Section 6, dictates that police take certain actions "whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused."[49] In *Ford v. Town of Grafton*, the court held that police failed to take those actions, contributing to the plaintiff's injury at the hands of her abusive ex-boyfriend. Yet the court did not find the city liable, establishing that the domestic violence statute is superseded by the Massachusetts Tort Claims Act (MTCA), which immunizes the city for any failure to provide police protection.[50] In Massachusetts, the domestic violence statute does not create liability for first responders.

Tort Claim Shields

In many states, statutes impose other restrictions that significantly reduce the volume or impact of liability lawsuits. In Massachusetts, while the MTCA does not shield cities from liability for ordinary negligence in first responder vehicle operation, it minimizes the impact by capping their liability per incident at just $100,000.[51] In

[46] 750 ILCS 60/303.
[47] 750 ILCS 60/305. See for example *Calloway v. Kinkelaar*, 168 Ill. 2d 312, 325–26, 659 N.E.2d 1322, 1329 (1995).
[48] *Schultz v. St. Clair Cnty.*, 2022 IL 126856, ¶ 32 (2022).
[49] G.L. c. 209A § 6.
[50] See *Ford v. Town of Grafton*, 693 N.E.2d 1047 (App. Ct. 1998) and the MTCA at G. L. c. 258 § 10(h).
[51] G. L. c. 258 § 2.

New York, General Municipal Law also helps shield cities by imposing onerous presentment and commencement requirements.[52] In North Carolina, for a negligence claim against a 9-1-1 call center, statute requires the plaintiff to meet a higher burden of proof.[53] These shields help protect 9-1-1 first response systems, including community responder programs, by making it harder for injured parties to win lawsuits. The liability caps protect cities by minimizing the cost of judgments and settlements, which in turn discourages injured parties from filing lawsuits.

As community responder programs gain public prominence, legislators may seek to clarify their legal immunities. The state of Washington recently passed legislation to clarify immunities for behavioral health crisis response. House Bill 2088 grants immunity to cities for injuries caused by "community-based intervention" to a person "experiencing a behavioral health crisis," except in cases of gross negligence or willful or wanton misconduct. This bill is particularly timely in light of the Washington Supreme Court's recent ruling that the public duty rule may not protect the provision of emergency medical services.[54]

Tort Claims Discussion

As stated above, we do not wish to oversimplify tort law by attempting to force fifty states' diverse bodies of law to fit a single mold. After reviewing statutes and case law in all 50 states, we have identified the above features as common trends in tort liability for first response systems. We provide further detail on how some states appear to deviate from these trends through a brief sketch of state-by-state variation in Appendix 1. We caution readers that our sketch is not comprehensive. In some cases, deeper review can uncover a single court decision that turns state law on its

[52] In legal jargon, "presentment and commencement requirements." See NY Gen Mun. Law §§ 50-e, i. New York County is carved out of the General Municipal Law but contains similar presentment requirements in NY County Law § 52.
[53] NC Gen Stat § 99E-65 (2015). While a criminal case must demonstrate guilt "beyond a reasonable doubt," a civil lawsuit normally only needs to demonstrate a "preponderance of the evidence." In other words, the plaintiff must prove that it is more likely than not that the city was responsible for the harm suffered by the plaintiff. This statute would instead raise the standard to require "clear and convincing evidence," which would be higher than "preponderance of the evidence," although lower than the criminal standard of "beyond a reasonable doubt."
[54] In *Norg v. City of Seattle*, No. 100100-2 (Wash. 2023), the Washington Supreme Court found that once the city began providing an emergency medical response, it was no longer covered by the public duty rule because "emergency medical assistance is not a unique function of government."

head by changing how courts resolve conflicts or gaps between statutes.[55] We recommend that cities ask their counsel for legal advice.

Also, while cities may only rarely face liability for first responder torts, depending on the facts of the case, the city may still incur significant legal costs. Normally in such cases, the city will avoid substantial legal costs because even a generous reading of the facts fails to demonstrate a special duty or gross negligence, leading the court to grant the city's motion to dismiss.[56] However, in exceptional cases, a plaintiff may provide a compelling argument for gross negligence. Since the facts are not fully developed at the motion to dismiss stage, the plaintiff may plead sufficient facts that the court rejects the city's motion to dismiss and allows the case to proceed to summary judgment.[57] By the time a case reaches the summary judgment stage, the city will already have spent time and resources conducting discovery and establishing a full factual record. On a fully developed factual record, a city may be able to convince a court to dismiss a suit where the facts do not support a plaintiff's claims or that a particular immunity clearly applies even when reading the facts in the light most favorable to the plaintiff. That said, even when a city attorney believes that a lawsuit would not be successful, they may still choose to settle a case to avoid costs, media attention, and a small chance of an unfavorable outcome.

To summarize the common features:

1. Cities are immune from claims related to policy-making.
2. If first responders commit intentional harm in bad faith, they are likely personally liable as individuals.
3. If first responders fail to prevent harm by a third party, they are not liable except for rare cases in which their actions establish a "special duty" to the individual.
4. If first responders commit unintentional harm while performing a governmental function, they are generally only liable for gross negligence.

---

[55] For example, as discussed above, in both Illinois and Massachusetts, the tort claims act immunizes cities for failure to provide police protection, while domestic violence statutes require police to provide certain protections. In Massachusetts, courts have held that with respect to city liability, the tort claims act supersedes the domestic violence statute, while Illinois courts have held the reverse.
For Massachusetts, see *Ford v. Town of Grafton*, 693 N.E.2d 1047 (App. Ct. 1998).
For Illinois, see *Schultz v. St. Clair Cnty.*, 2022 IL 126856, ¶ 29 (2022) and *Moore v. Green*, 219 Ill. 2d 470, 480 (2006).

[56] Courts can rule on these issues as a matter of law and grant a city's motion to dismiss, unless a generous interpretation of the facts would suggest a special duty or gross negligence. For example, see: *Muthukumarana v. Montgomery County*, 805 A. 2d 387 - Md: Court of Appeals 2002.

[57] Some cases may not involve a motion for summary judgment and may instead proceed to trial.

5. The primary exception is vehicle operation, for which first responders are often liable at an ordinary negligence standard.

While some states deviate from this common pattern, in every state, cities appear to be less likely to face tort liability for dispatching community responders to low-risk 9-1-1 calls than for dispatching police. Cities are most likely to face tort claims where responders are grossly negligent. Police are far more likely to cause grossly negligent harm than community responders due to use of force.[58] Cities also face significant exposure for negligence in driving, though this is no different than liability cities already face from existing city employees operating city vehicles in the scope of their employment. Community responders are less likely to cause a traffic collision, since unlike other first responders, they are subject to regular traffic rules. Community responders are most likely to indirectly contribute to harm by failing to prevent harm caused by a third party, for which cities typically face almost no liability absent exceptional special circumstances.

[58] A few community responder teams conduct occasional involuntary mental health commitments, which could involve use of force from a legal perspective. They are far less likely to face lawsuits for use of force compared to police, who face gross negligence lawsuits for using excessive force, failing to properly secure a detainee during transport, and for failing to arrest a drunk driver. See:
Richmond v. Swinford, No. 2:12-CV-243 RM, 2012 WL 5903808, at *4 (N.D. Ind. Nov. 26, 2012)
Morris v. Blake, 552 A.2d 844, 848 (Del. Super. Ct. 1988), aff'd sub nom. *Sussex Cnty., Del. v. Morris*, 610 A.2d 1354 (Del. 1992)
Turner v. City of Ruleville, 735 So. 2d 226, 230 (Miss. 1999)

Federal Constitutional Claims

Federal law enables injured parties to sue city employees who violate their constitutional rights. If an employee acting under color of state law injured someone by violating their constitutional rights, that person can sue the employee as an individual under the federal civil rights statute 42 U.S.C. § 1983, popularly known as a "1983 claim." For example, courts have established that police officers have violated an individual's constitutional rights when they injure that individual through excessive use of force.[59] The courts have decided that when police injure that person, they are violating the victim's Fourth Amendment protection against unreasonable searches and seizures.[60] Individuals can also sue when city employees violate other constitutional rights, such as freedom of speech or due process of law.

The injured party can also attempt to sue the city rather than the individual employee, which is known as a "*Monell* claim." To sue the city, they must show that the employee's violation was caused by the city as an entity, usually through a city's official policy, custom, deliberate indifference, or ratification by an official policymaker.[61] However, *Monell* claims rarely succeed, because it is difficult to meet this standard. In financial terms, suing the individual makes little difference, because

[59] See for example *Clark v. Ziedonis*, 513 F.2d 79, 80 n.1 (7th Cir. 1975).
[60] Lawyers have attempted to establish a constitutional requirement for police to enforce the law to protect individuals' *property* under the Fourteenth Amendment's Due Process clause that no person shall be "deprived of life, liberty, or property without due process of law." However, the U.S. Supreme Court rejected this argument in *Castle Rock v. Gonzales*, 545 U.S. 748 (2005). Police do face 1983 claims for other violations of the Fourteenth and First Amendments.
[61] Suing a city under section 1983 is known as a *Monell* claim because the right to sue local governments under section 1983 was clarified by *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978).

the city still ends up paying the judgment or settlement against the individual employee.[62] The difference lies in policy – if the injured party sues the city, they can seek "injunctive relief," meaning that the court orders the city to stop or change a particular policy or practice.

Traditional First Response

Cities face significant federal liability for law enforcement 9-1-1 responses. Across the country, cities pay out hundreds of millions of dollars per year due to injuries caused by law enforcement.[63] The nation's 25 largest law enforcement agencies alone paid $3.2 billion over the last ten years to settle lawsuits.[64] They paid about half of this money on behalf of officers responsible for more than one lawsuit.[65]

Even when these settlements and judgments are covered by insurance, cities do not escape costs. First, insurance often provides only partial coverage.[66] Second, lawsuits can cause higher insurance premiums. In Sonoma County, California, after the Sheriff's Office experienced a few years of expensive excessive force payouts, their insurance company almost doubled their premiums from $3.2 million in 2019 to $5.9 million in 2020.[67] Insurance pools have even begun requiring police agencies to change their policies and training to keep their insurance coverage.[68]

---

[62] Joanna C. Schwartz, "Police Indemnification," *New York University Law Review* Vol. 89 No. 3, June 2014, accessed at https://www.nyulawreview.org/issues/volume-89-number-3/police-indemnification/.
[63] Michael Maciag, "City Lawsuit Costs Report," *Governing*, Oct 27, 2016, available at https://www.governing.com/archive/city-lawsuit-legal-costs-financial-data.html
[64] "Repeated police misconduct cost taxpayers $1.5 billion in settlements." 9 Mar. 2022, https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements/. Accessed 14 Jun. 2023.
[65] Ibid.
[66] As an example of partial insurance coverage, when Elijah McClain's family received $15 million in the civil rights case for his tragic death, the city's insurance only covered up to $10 million. Keith Coffman, "Colorado city settles civil rights suit by Elijah McClain family for $15 mln," Reuters, November 19, 2021. Accessed at https://www.reuters.com/legal/government/colorado-city-pay-15-million-settle-civil-rights-suit-by-elijiah-mcclain-family-2021-11-19
[67] Tyler Silvy, "Sonoma County Sheriff's Office insurance premium increase tied to excessive force settlements," *The Press Democrat*, Sept 8, 2020, available at https://www.pressdemocrat.com/article/news/sonoma-county-sheriffs-office-insurance-premium-increase-tied-to-excessive
[68] "Insurers force change on police departments long resistant to it." 14 Sep. 2022, https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-insurance-settlements-reform/. Accessed 14 Jun. 2023.

While many police lawsuits involve officers entering a life-threatening situation, many others begin with an officer answering a low-risk 9-1-1 call. Tragically, low-risk 9-1-1 calls have led to several of the highest-profile officer-involved deaths in recent years.[69]

Unfortunately, the mere presence of armed, uniformed law enforcement can unintentionally escalate a low-risk call. Cities depend on officers to put themselves at risk by entering inherently dangerous situations in the interest of protecting the public. Accordingly, police agencies equip officers with firearms and non-lethal weapons to protect themselves in worst-case scenarios. Officers carry this equipment at all times, including on low-risk 9-1-1 calls. When an officer arrives at such a call, they may find an individual who is already living the worst day of their life. They see these weapons on the officer's belt or in their hands and may become even more upset and unpredictable because they have a history of negative interactions with the police or they are afraid of police due to stories from family, friends, or the media. An officer's presence is particularly likely to trigger a person experiencing a mental health crisis. As a report by the International Association of Chiefs of Police explains, "the mere presence of a law enforcement vehicle, an officer in uniform, and/or a weapon may be seen as a threat to a [person in crisis] and has the potential to escalate a situation."[70]

Officers can also unintentionally escalate low-risk situations due to their training and experience. Today, police academies are providing increasing amounts of de-escalation and crisis intervention training. Yet, as prominent police leaders have noted, most agencies spend a disproportionate share of training preparing officers to use force and recognize threats to their life.[71] Once in the field, officers personally experience and hear about life-threatening situations. Their training and life experience can create a state of hypervigilance against safety threats. While this hypervigilance may save their life, on a low-risk 9-1-1 call it is also likely to help escalate tensions – as police experts warn, officers must de-escalate themselves first in order to de-escalate others.[72]

---

[69] See for example the devastating cases of George Floyd, Rayshard Brooks, Michael Brown, and Elijah McClain.

[70] IACP Law Enforcement Policy Center, "Responding to Persons Experiencing a Mental Health Crisis," August 2018, p. 2, available at https://www.theiacp.org/sites/default/files/2018-08/MentalIllnessBinder2018.pdf

[71] Council on Criminal Justice, "Task Force Calls for Overhaul of U.S. Police Training, National Standards to Reduce Use of Force," press release available at https://counciloncj.org/police-training-standards/

[72] David Kahn and Sgt. (Ret.) Mick McComb, "De-escalate yourself first and then de-escalate others," *Police1*, August 23, 2021, available at https://www.police1.com/police-training/articles/de-escalate-yourself-first-and-then-de-escalate-others-K5jrw8lowiRA4m4C/

All of these factors increase the chance that, even when responding to a low-risk 9-1-1 call, police may use force, injure someone, and expose the city to significant liability.[73]

Community Responders

Since community responders do not make arrests, seize or search property, detain people, or use force against the public, we believe they are highly unlikely to face a 1983 lawsuit for violating someone's Fourth Amendment rights. While community responders may technically use force on a member of the public, particularly in cities where they conduct involuntary commitments, we are unaware of any instances of a community responder causing harm by using force. Compared to use of force by police, any use of force by community responders would be rare and almost certainly lead to lesser injuries.

We do not consider it likely that courts would hold community responders responsible for any other constitutional violations. 1983 claims against Fire and EMS responders appear to be far less common than claims against police. While city officials sometimes worry about lawsuits for slow response times or incompetent

[73] City liability for police would be even greater if not for the federal judicial doctrine of qualified immunity, which can shield officers from liability even for clear constitutional violations. It requires the court to find that the officer should have known that they were committing a constitutional violation. The court assesses this fact by determining if any courts in the same judicial circuit have previously found a substantially similar act to be a constitutional violation. See for example *Pearson v. Callahan*, 555 U.S. 223, 243-44 (2009). Qualified immunity would likely also attach to community responders, if they were the subject of a 1983 claim, as it does to other city 9-1-1 responders. It would likely provide even stronger protection for community responders, because there is no history of acts by community responders that courts have found to be constitutional violations.

care at medical emergencies, courts have consistently rejected such 1983 claims.[74] EMS can potentially face 1983 liability for substandard medical care, but only for incarcerated or involuntarily committed patients, who cannot turn elsewhere to meet their medical needs.[75] Community responders are even less likely to face such lawsuits, since they generally are not tasked with providing emergency medical responses or care.

Dispatching Community Responders

Similarly, 9-1-1 call-takers and dispatchers are not likely to violate anyone's constitutional rights. In rare cases, however, they can help create the conditions for constitutional violations by making errors that lead to police use of force. For example, in the tragic case of Tamir Rice, dispatch staff informed police that Rice was holding a gun but failed to inform them that the caller thought Rice's gun was fake. Police shot and killed Rice, Rice's family sued the city, and the city ended up paying $6 million to settle the lawsuit.

Just as community responders themselves are unlikely to face 1983 claims because they rarely use force, dispatch staff are unlikely to contribute to a situation resulting in a 1983 claim situation by dispatching community responders. Unfortunately, dispatchers who have spent decades sending calls to police often feel that continuing to send police is the "safe" option. 9-1-1 centers can help address this

---

[74] For example, courts have clarified that while the Due Process Clause of the Fourteenth Amendment bars the state from depriving individuals of life, liberty, and property without due process of law, it does not require the state to affirmatively protect individuals from such deprivations.
See:
DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989).
Wideman v. Shallowford Community Hosp., Inc., 826 F.2d 1030 (11th Cir. 1987).
Jay Fisher, "Twenty Minutes? Thirty? Forty? EMS Liability for Delayed Response Times," *Journal of Emergency Medical Services*, available at https://www.jems.com/operations/ems-liability-for-delayed-response-times/.
However, if the injured party could demonstrate that the city intentionally discriminated against them, they could potentially receive relief under the Fourteenth Amendment's Equal Protection Clause. See:
Bhagat v. City of Santa Ana, 58 F. App'x 332 (9th Cir. 2003).

[75] See for example:
Rodriguez v. Plymouth Ambulance Service, 577 F.3d 816 (2009).
Estate of Rice Ex Rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012).
Estelle v. Gamble, 429 U.S. 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).
Youngberg v. Romeo, 457 U.S. 307 (1982).

hesitancy by providing their staff with clear protocols, careful training, and opportunities to get to know the community responders.[76]

[76] Amos Irwin and Rachael Eisenberg, "Dispatching Community Responders to 911 Calls," Center for American Progress and Law Enforcement Action Partnership report, December 2023, available at https://lawenforcementactionpartnership.org/wp-content/uploads/2024/02/CommunityResponders-report-PDF.pdf

Federal Statutory Claims

Cities can also face federal lawsuits if they cause harm by violating a federal statute. In addition to injured parties filing suit directly, 42 U.S.C. § 14141 empowers the U.S. Attorney General to sue any agency that harmed a plaintiff through violations of federal law as long as those violations constitute a "pattern or practice." First, the Department of Justice (DOJ) conducts and publishes a "pattern or practice" investigation. If they identify such systemic unlawful conduct, rather than suing, they generally seek a "consent decree." In the consent decree process, they work with the city to come to consensus on reforms that would correct the pattern or practice, and then a federal court order establishes an independent monitor to ensure that the city enacts those reforms.

We did not identify any federal statutes specifically governing first response systems that would likely create liability for cities dispatching community responders to low-risk 9-1-1 calls. Federal and state law generally provide wide latitude for cities to decide how to handle calls in the interest of public safety. Cities are more likely to face statutory liability for obligations created elsewhere in federal law that apply broadly across city operations.

One likely source is the Americans with Disabilities Act (ADA). Plaintiffs have successfully sued the police for discriminating on the basis of disability under the

Americans with Disabilities Act (ADA).[77] Multiple cities are currently facing ADA lawsuits for dispatching police to mental health-related 9-1-1 calls. These claims argue that by dispatching police to handle mental health calls, cities are discriminating on the basis of disability, since those calls primarily impact people with "mental health disabilities."[78] DOJ has filed a Statement of Interest supporting one such case in the District of Columbia.[79] Courts have yet to rule on these cases. The DOJ has also raised this concern in investigations of the Louisville and Minneapolis Police Departments, which resulted in consent decree processes.[80] These recent developments highlight not only that cities may face liability under the ADA, but also that new case law can always create additional areas of city liability.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and state-level privacy laws also require agencies to monitor their sharing of private health information. For example, if a city contracts with a health care service provider to staff a community responder program, HIPAA bars the provider from entering protected health information into the Computer Aided Dispatch (CAD) system, where it could be seen by law enforcement. Community responder programs protect their data by entering it in a separate record management system.[81]

While agencies should be careful to avoid HIPAA violations, they often overestimate the barriers that HIPAA imposes. For example, many agencies do not realize that HIPAA allows two providers serving the same individual to share patient information for treatment purposes without seeking prior permission from the patient.[82] Some

---

[77] See for example *Gorman v. Bartch*, 152 F. 3d 907 - Court of Appeals, 8th Circuit 1998 ("Holding that a paraplegic arrestee could make out a reasonable accommodation claim under the ADA after being injured in a police van not equipped with wheelchair restraints.")
[78] Lucas Manfield, "Disability Rights Advocates Sue Washington County for Sending Police to Mental Health Emergencies," *Willamette Week*, Feb 6, 2024, accessed at https://www.wweek.com/news/courts/2024/02/06/disability-rights-advocates-sue-washington-county-for-sending-police-to-mental-health-emergencies/
[79] See *Bread for the City v. District of Columbia*, Civil Action No. 23-01945-ACR, and the DOJ statement of interest at https://www.justice.gov/d9/2024-02/bread_v._dc_statement_of_interest_as_filed_in_court_on_feb._22_2024_0.pdf
[80] U.S. Department of Justice, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, June 16, 2023, at 57, available at https://perma.cc/STU8-HQ3J
U.S. Department of Justice, *Investigation of the Louisville Metro Police Department and Louisville Metro Government*, March 8, 2023, at 59-60, available at https://perma.cc/W9CA2BNR
[81] Policing Project and Dignity Best Practices, "Alternative Response and 911 Computer Aided Dispatch (CAD): Lessons learned from the field," Summer 2023, pp. 6-8, available at https://www.safetyreimagined.org/designing-a-reimagined-system/alternative-response-and-911-computer-aided-dispatch-cad
[82] See 45 CFR § 164.502(a)(1)(ii) and § 164.506(c)(2).

programs may not be subject to HIPAA at all.[83] Since information-sharing can be crucial to program success, cities should seek legal advice before prohibiting a particular type of information-sharing due to HIPAA concerns.

Cities should also understand HIPAA liability exposure. While cities should avoid violating HIPAA, they should be aware that HIPAA does not include a private cause of action, so an individual cannot sue a city simply for violating HIPAA.[84] While an individual could file a tort claim, they would have to demonstrate that the city's HIPAA violation had caused them harm, and the city would benefit from tort claim immunities. Individuals could also file a complaint with the federal Department of Health and Human Services' Office for Civil Rights (OCR).

To keep up with federal statutory concerns, we recommend that cities monitor new developments in case law, in particular the recent ADA lawsuits. If such claims succeed, cities would reduce their exposure to this area of liability by sending community responders to low-risk calls.

---

[83] See for example:
"N.Y. case illuminates HIPAA basics for fire departments," *FireRescue1.com*, Oct 6, 2021, available at https://www.firerescue1.com/legal/articles/ny-case-illuminates-hipaa-basics-for-fire-departments-9W1fI2dYf5uxDxhp/
Center for Medicare and Medicaid Services, "Administrative Simplification: Covered Entity Decision Tool," updated Apr 3, 2024, available at https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/Downloads/CoveredEntitiesChart20160617.pdf

[84] Steve Alder, "Can a Patient Sue for a HIPAA Violation?" *The HIPAA Journal*, Dec 1, 2023, available at https://www.hipaajournal.com/sue-for-hipaa-violation/

Workers' Compensation

Traditional first response

When city officials bring up liability concerns, they are generally not thinking of workers' compensation, but it is worth discussing. In Maryland, for example, nine percent of all claims are filed by police officers, more than any other profession.[85] The system also affords police special privileges: it compensates them at higher rates and presumes by default that some illnesses are work-related.[86] While many claims are caused by everyday mishaps, research suggests that three of the most common causes are falls, assaults, and motor vehicle accidents.[87] These causes are connected to officers' use of force. Assaults primarily occur while police are using force on a member of the public. Some falls and motor vehicle accidents may stem from police chases.

[85] Maryland Workers' Compensation Commission, "2021 Annual Report," 14, accessed at http://wcc.state.md.us/PDF/Publications/AR_2021.pdf.
[86] The public also continues to pay for officers' health problems after they retire. Workers' compensation has covered retired officers' heart attacks, since police work is so stressful that heart attacks can be considered work-related even if they occur years after retirement. It has also covered hip surgery for retired officers, because they have spent decades carrying a weighted equipment belt. Workers' compensation payouts are a hidden cost of police response.
[87] See for example Alfreda Holloway-Beth, et al., "Occupational Injury Surveillance Among Law Enforcement Officers Using Workers' Compensation Data, Illinois 1980 to 2008," Journal of Occupational and Environmental Medicine Vol. 58 No. 6, June 2016, 597.

Community Responders

We expect that community responders will file for workers' compensation at lower rates than law enforcement. They are entitled to workers' compensation, though not to special privileges that often exist solely for police. Since community responders generally do not use force with members of the public, we expect them to experience fewer assaults, even on similar low-risk calls. Indeed, existing community responder programs have not reported any responders being injured by a member of the public. Community responders call for emergency police backup only in one or two out of every thousand calls.[88] Like law enforcement, they are trained to assess scene safety and de-escalate tensions. Unlike law enforcement, their presence does not automatically increase tensions, they do not carry weapons that the person can attempt to grab, and they do not use force if tensions escalate.

Since community responders do not conduct chases or emergency "lights and sirens" responses to calls, we believe they are also less likely to sustain falls or vehicle accidents. Still, community responders will sustain routine injuries in the course of responding to calls.

However, we do not have reason to believe that a significant number of police workers' compensation claims stem from low-risk calls. As a result, it is unclear whether cities will reduce workers' compensation claims by moving these calls to the plate of community responders.

[88] Rachel Bromberg, "Busting Myths About Safety and Community Responder Teams." 7 Oct. 2021, https://csgjusticecenter.org/2021/10/07/busting-myths-about-safety-and-community-responder-teams/.

Liability Protection

Cities should concentrate on three key areas to minimize their liability exposure:

1. Policy and training
2. Insurance
3. Contracts[89]

Policy and Training

Cities can help minimize the liability associated with community responder programs by writing clear policies and protocols and by carefully training staff on them. Of course, responders must understand that their scope of work does not include use of force. They should understand when to summon police or emergency medical assistance. They should understand any state-mandated reporting requirements, such as for domestic violence or child abuse and neglect. They should consult with other cities' program directors to identify other exceptional circumstances that would benefit from policy guidance.[90] Program directors should

[89] If they contract with an external service provider to operate, manage, and/or staff the community responder program.

[90] For example, responders might transport a minor to a new location despite being unable to reach their guardian to obtain consent. A procedural protocol could include specifics such as how the responder should document the transport in the Computer-Aided DIspatch (CAD) system and when they should check in to report their progress.

seek the guidance and approval of city lawyers on legal requirements and policy language.

As discussed in the tort policy-making section, by writing dispatch and responder procedures into policy, cities can help protect their programs from tort liability by providing clear guidance and minimizing the likelihood that a responder might act in a grossly negligent manner.

Cities should not avoid creating policy out of fear that writing down more policy will expand their liability by increasing policy violations. Cities' tort liability rarely appears to turn solely on questions of whether or not responders violated policy. One might expect policy to play a crucial role, since courts often use policies and protocols to judge whether conduct was reasonable. However, the existence of a policy would not change the standard applied by the courts when assessing responder conduct. Simply violating a policy or protocol alone would likely not be sufficient for the court to find their conduct grossly negligent.[91] As long as policies do not lead community responders to violate constitutional rights or other law, setting new policies should not expand liability.[92] That said, cities should provide solid training and supervision to ensure that responders follow policy, since courts can find the city grossly negligent if the city fails to address known patterns of recurring problems.[93]

In terms of training, community responder programs rightfully prioritize responder safety. Cities have dispatched community responders to hundreds of thousands of

---

[91] More likely, the court would include a policy violation as one of several factors that contributes to a "totality of the circumstances" reaching the standard of gross negligence. See for example a car chase policy violation as one factor in *City of Jackson v. Lewis*, 153 So. 3d 689, 699 (Miss. 2014).

[92] For example, policy should not guide community responders to interfere with free speech.

[93] We did find one Indiana case in which the court determined that whether a 9-1-1 call center committed wanton misconduct was a genuine question of material fact, largely since the city's 9-1-1 system had a pattern of unaddressed prior reported problems. As a result, the court refused to dismiss the case at summary judgment and allowed it to proceed to trial, where the jury found in favor of the municipality. *Howard Cnty. Sheriff's Dep't & Howard Cnty. 911 Commc'ns v. Duke* 172 N.E.3d 1265, 1270 (Ind. Ct. App. 2021)
In an unpublished opinion, a Connecticut court permitted a case to survive summary judgment where a dispatcher failed to send a responder to investigate a 911 call in clear violation of established 911 procedures. The case turns on the city's "wholesale failure to provide any training to its dispatchers" but appears to have been complicated by the city's failure to provide evidence on summary judgment, the reason for which is unclear from the decision. *Gebo v. McDonald*, No. MMXCV095006226S, 2010 WL 4277743, at *3 (Conn. Super. Ct. Oct. 8, 2010).
In federal law, if program policy led a responder to violate someone's constitutional rights, then rather than simply bringing a federal 1983 claim against the individual responder, the person could use the policy to bring a *Monell* claim against the city. That said, we do not anticipate that a written policy for community responders would create a constitutional violation, unless they were directed to report evidence of crimes or obstruct free speech.

calls with no known serious injuries or fatalities thanks to a three-tiered screening process, which all community responder programs should implement. First, dispatch centers train call-takers to screen out safety risks by asking the caller about weapons and credible threats of violence, and then sending screened-out calls to the police.[94] Second, community responder programs train their responders to approach scenes safely, maintaining physical separation while they scan for signs of weapons or violence, which would lead them to back away and involve the police. Third, while the responder is handling the situation, if it begins to escalate toward possible violence, responders are trained to safely distance themselves and summon backup. Thanks to this three-tiered process, community responders only call for police to take over about 2% of calls and only call for emergency backup on about 0.2%.[95] This training is vital to protect responder safety, minimize workers' compensation claims, and preserve confidence in the program.

City staff should also be trained not to unwittingly create a special duty. In other words, call-takers and responders should be trained not to make explicit promises that could cause potential victims to put themselves in a risky situation, for example

---

[94] Amos Irwin and Rachael Eisenberg, "Dispatching Community Responders to 911 Calls," Center for American Progress and Law Enforcement Action Partnership report, December 2023, available at https://lawenforcementactionpartnership.org/wp-content/uploads/2024/02/CommunityResponders-report-PDF.pdf

[95] CRT in Durham and CAHOOTS in Eugene call for emergency police backup in about 0.01% and 0.2% of cases (25 out of 13,854 calls in 2019), respectively. Denver's STAR program has not called for police backup once.
Most programs have only reported the volume of calls they handed off for police to handle or follow up on, which do not generally involve any safety risk to responders. San Francisco and Eugene report that community responders only handed roughly 2% of calls off to police. Durham and New Orleans responders report feeling safe on over 99% of calls. See:
Eugene Police Department Crime Analysis Unit, "CAHOOTS Program Analysis" (Eugene, OR: 2020), available at https://www.eugene-or.gov/DocumentCenter/View/56717/CAHOOTS-Program-Analysis#page=6
Durham Community Safety Department, "HEART Data Dashboard," updated May 8, 2024, available at https://app.powerbigov.us/view?r=eyJrIjoiMWQ1YzViMGYtYmI1MC00NWM3LTg1NWUtMjdjNzk3NWNlYzU0IiwidCI6IjI5N2RlZjgyLTk0MzktNDM4OC1hODA4LTM1NDhhNGVjZjQ3ZCJ9
Ryan Smith, "Crisis Response Pilot Plan Updates," Durham Presentation to City Council, January 2022, slide 23, available at https://www.durhamnc.gov/DocumentCenter/View/42379/CSD-Council-presentation-Jan2022?bidId=
Resources for Human Development, "New Orleans Mobile Crisis Intervention Unit (MCIU) First Nine Months Summary," April 2024, available at https://www.rhd.org/wp-content/uploads/2024/04/9-month-evaluation.pdf
Dena Delaviz, "MACRO Impact September 2023," City of Oakland MACRO Impact Report, slide 7, available at https://cao-94612.s3.us-west-2.amazonaws.com/documents/September-2023-Report.pdf

guaranteeing to protect someone's safety.[96] While we only uncovered three cases in which a court found that first responders who failed to prevent harm had established a duty,[97] cities can reduce even this minimal risk through training.

Cities should also ensure that training helps make 9-1-1 call center staff comfortable dispatching community responders. Since long-serving dispatchers have spent decades sending calls to police, they often feel that continuing to send police is the "safe" option.[98] To address this perspective, 9-1-1 centers should discuss with their staff the risks of sending police to low-risk calls. Centers can most effectively impact hesitancy to send community responders by providing their staff with clear protocols, careful training, and opportunities to get to know the community responders.[99]

---

[96] Responders should be particularly careful to avoid assurances if they help create the conditions that endanger someone – for example, if they agree to transport an individual to an unsafe location. As discussed above, police have established a special duty by creating conditions that lead to harm by a third party. *Gardner v. Village of Chicago Ridge*, 71 Ill.App.2d 373, 219 N.E.2d 147 (1966).

[97] As discussed above, in *DeLong v. County of Erie*, 89 A.D.2d 376, 455 N.Y.S.2d 887 (N.Y. App. Div. 1982), the court found that the city had established a special duty by (i) advertising a new 9-1-1 number where residents could reach police, (ii) promising the caller to send an officer right away, (iii) failing to send the police at all, and (iv) understanding that the caller was choosing to risk death to wait for them due to their promises.
In *St. George v. City of Deerfield Beach*, 568 So. 2d 931 (Fla. 4th DCA 1990), the court found a special relationship could exist where responders (i) answered a 911 call by the decedent regarding an emergency medical situation but where decedent refused treatment, (ii) left the scene and assured the decedent that they would return if the situation worsened, and (iii) failed to return (because of the operator's negligence) when the decedent later called again. Similarly, although Alaska takes a unique "ad hoc" approach to duty rather than applying the public duty rule, in practice it has only established this duty in similarly exceptional circumstances. In *Kotzebue v. McLean*, 702 P.2d 1309 (1985), the Supreme Court affirmed a jury verdict holding the city liable for police failure to intervene where a police officer (i) received a life-threatening call, (ii) knew the identity of the potential assailant, (iii) was able to identify the likely crime scene, (iv) failed to follow police procedure to investigate, and (v) failed to ask another available officer to investigate.

[98] Policing Project and Dignity Best Practices, "Alternative Response and 911 Computer Aided Dispatch (CAD): Lessons learned from the field," Summer 2023, p. 14, available at https://www.safetyreimagined.org/designing-a-reimagined-system/alternative-response-and-911-computer-aided-dispatch-cad

[99] Amos Irwin and Rachael Eisenberg, "Dispatching Community Responders to 911 Calls," Center for American Progress and Law Enforcement Action Partnership report, December 2023, p. 10, available at https://lawenforcementactionpartnership.org/wp-content/uploads/2024/02/CommunityResponders-report-PDF.pdf

Insurance

Cities carry insurance to protect themselves against claims, similar to any person or company. In addition to liability insurance, cities carry other types of insurance that cover liability, from automotive insurance for city-owned vehicles to building insurance for city facilities.

Most small- to mid-sized cities are part of an insurance pool, composed of several cities that help share the collective burden of lawsuits. Each city pays a premium into the pool. If someone sues one member of the pool, that city must cover up to a certain deductible amount, and then the pool covers the rest of the claim.[100] Cities work with the pool administrators to determine whether or not to litigate on claims that would require pool funds. The costs of litigation and any judgment against the city would be borne jointly by the city and the insurance pool based on the terms of the insurance pool.

Most large cities are primarily or entirely self-insured.[101] Regardless of insurance type, cities may choose to settle without admitting fault because they believe that going to court would likely cost more than the settlement.

In a few states, cities' insurance policies directly impact their immunities. In Arkansas, Georgia, South Dakota, and Vermont, statute dictates that cities lose their immunity for a claim if they purchase insurance that would cover it.[102] Cities in these states might benefit from avoiding overly broad insurance coverage, which could

[100] Some insurance policies and pools may also have a limit. For example, when Elijah McClain's family received $15 million in the civil rights case for his tragic death, the city's insurance only covered up to $10 million. Keith Coffman, "Colorado city settles civil rights suit by Elijah McClain family for $15 mln," Reuters, November 19, 2021. Accessed at https://www.reuters.com/legal/government/colorado-city-pay-15-million-settle-civil-rights-suit-by-elijiah-mcclain-family-2021-11-19

[101] Michael Maciag, "City Lawsuit Costs Report," *Governing*, Oct 27, 2016, available at https://www.governing.com/archive/city-lawsuit-legal-costs-financial-data.html

[102] In Arkansas, state statute provides complete immunity from tort liability except to the extent the city carries liability insurance. § 21-9-301. See for example *Dayong Yang v. City of Little Rock*, 575 S.W.3d 394, 2019 Ark. 169 (Ark. 2019).
In Georgia, North Carolina, South Dakota, and Vermont, municipal immunity is waived by a municipality securing insurance for the relevant conduct. This waiver is coterminous with the coverage. See:
Georgia: *Weaver v. City of Statesboro*, 653 S.E. 2d 765 (Ga. Ct. App. 2007)
North Carolina: NC St. § 160A-485 with respect to cities, and NC St. § 153A-435 with respect to counties
South Dakota: *Gabriel v. Bauman*, 847 N.W.2d 537 (2014); SDCL §§ 21-32A-1-3; *accord* SDCL § 3-22-17.
Vermont: Vt. Stat. 29, § 1403.

potentially expose their insurance company to more claims and result in higher insurance premiums.

To minimize risks, the program director should work closely with the city's risk manager and counsel. During program creation, the risk manager will review job descriptions and program protocols, working with insurance companies to determine if the city needs to adjust its insurance coverage. The risk manager can minimize additional insurance costs if they have consulted with the program director early and often, understanding how these programs work and have proven safe and effective. The risk manager can even help identify small details to reduce risk, from appropriate footwear to vehicle child safety locks.

Community responder service providers can purchase various levels and types of insurance from traditional commercial insurance providers, who will help service providers satisfy the contract's specific insurance requirements. Service providers may benefit from developing relationships with their insurance companies to understand how their insurance is priced and how much litigation could cost them.

Contracts

Several cities contract with an external service provider[103] to manage some components of their community responder program. In most of those cities, the service provider hires, trains, and manages the responders. In a few cities, the service provider has a larger role, also managing call-taking and dispatch. In others, they have a smaller role, simply staffing the responders while a city agency bears the responsibility of training and managing day-to-day operations.

Anytime a city contracts with an external service provider, the city should negotiate a strong contract with indemnity provisions and minimum insurance coverage. In industries with heavy competition, the city holds a strong bargaining position and may be able to present the service provider with a "take it or leave it" contract. That contract can dictate that the service provider assume *all* liability risk in their operations and indemnify the city. In practice, cities contracting for community responder services usually have few options and little time, so they may have to accept less favorable contract terms. They may even apply for a grant to establish the

[103] We use "service provider" to refer to any nonprofit or other organization that signs a contract to provide services for a city, such as one that is providing community responder services.

program in conjunction with the service provider. If they receive the grant, the city is in a weak position to negotiate contract terms.

Even if the service provider does assume all liability risk and subsequently causes harm within the scope of their contract, the injured party may still be able to sue the city, no matter what the contract says. The service provider may not have the funds to pay a judgment or settlement, and the plaintiff's attorney may sue the city since it has "deeper pockets."[104] Even if the provider assumes full liability and does have the funds, the city may not want to make the news by suing a popular local nonprofit to recover those funds.

Cities that contract with external service providers will need to ensure the provider carries appropriate insurance. Some cities contract with local nonprofits to staff and run their community responder program. Cities require every service provider they contract with to carry insurance. They want to make sure that if a provider causes significant damages, it will not declare bankruptcy and leave the financial burden to the city. Cities generally require providers to hold robust policies for automotive insurance, workers compensation insurance, unemployment insurance, and professional liability insurance.

If cities contract with service providers, they should require them to provide proof of all required insurance before signing the contract. They should require service providers to add the city as an additional named insured party on their policies, so the city can file a claim directly with the insurance company. They should also require the providers to deliver certificates of insurance showing the required minimum coverage amounts. Service providers should begin discussions about insurance requirements early on with city staff, specifically the city attorney and/or risk manager, in order to avoid delays in beginning the work.

The service provider can mitigate its own risk in turn by limiting the scope of the contract. Even a "take it or leave it" contract will only force the service provider to indemnify the city for responsibilities within the scope of the contract. For example, if a community responder arrived and requested backup assistance from an officer, and the officer subsequently injured a member of the public, that person could not hold the community responder service provider liable for that harm, because using force is not part of the service provider's scope of work. It might seem far-fetched that someone would sue community responders for the actions of the police, but personal injury lawyers often sue every actor on the scene. The service provider

[104] Also, by suing a larger number of defendants, the plaintiff may be able to collect more money through multiple settlement payments across different insurance carriers.

might then have to expend energy and resources to remove themselves from the suit. The service provider would most easily escape the lawsuit if its contract defined a clear scope of work.

Cities that contract with a service provider may also encounter additional liability concerns. For example, service providers may be governed by regulatory bodies that impose additional duties. 9-1-1 call centers have raised legal concerns about forwarding call information to crisis lines, including 9-8-8, though the experts in this area believe that this issue poses little liability risk.[105]

[105] When it comes to forwarding call information to crisis lines, NASMHPD's 988 Implementation Playbooks comment that there is “no reasonably foreseeable legal risk” with 9-1-1 PSAPs sharing caller location and caller disposition information to a crisis line. See p. 37: https://www.nasmhpd.org/sites/default/files/988_Convening_Playbook_Public_Safety_Answering_Points_PSAPs.pdf

Beyond Legal Liability

Cities, employees, and service providers can still face significant costs without losing a single lawsuit. First, anytime a lawsuit plausibly claims gross negligence or another relevant standard, smaller cities or service providers without in-house counsel or city attorneys will have to pay for their legal defense. Often, the plaintiff does not plead sufficient facts to demonstrate gross negligence or the relevant legal standard, and the judge will throw it out at the motion to dismiss stage.[106] However, judges take a generous view of the plaintiff's facts at the early motion to dismiss stage, since the facts are not fully developed until discovery. If a generous interpretation could suggest gross negligence or the relevant standard, the judge will likely refuse to dismiss the case, forcing the city to accrue costs to litigate the case through the discovery and motion phases. Once the parties complete discovery and reach the summary judgment stage, the judge will require the facts, when read most favorably for the plaintiff, to meet the relevant standard or will otherwise dismiss the case.[107] Even if city attorneys believe they will win a case, they may choose to pay a settlement rather than have to use their time and resources to fight the lawsuit.

Cities, employees, and service providers can also face reputational costs. Cities often successfully defend themselves in court but not in the court of public opinion. In the

[106] As long as the plaintiff fails to plead sufficient facts, the court can rule on these issues as a matter of law and grant a city's motion to dismiss. For example, see: *Muthukumarana v. Montgomery County*, 805 A. 2d 387 - Md: Court of Appeals 2002.
Martinez v. Estate of Bleck, 379 P.3d 315, 322 (Co. 2016).
[107] Costs are often lower in a case involving qualified immunity, since the court often grants limited discovery on the issue of qualified immunity.

case of federal civil rights lawsuits against police, for example, cities often win a lawsuit due to the qualified immunity doctrine. However, a majority of the public now appears to oppose qualified immunity, so media coverage of the case's dismissal can spark significant backlash against the city, police, and individual officer.

While city employees generally have no need to fear personal liability, they may face great personal stress and costs to their reputation. City employees should be reassured to learn that cities usually foot the bill, even in the rare case a court finds an individual employee personally liable for misconduct.[108] Yet in extreme cases, employees can forfeit the city's legal protection if they utterly fail to cooperate with basic requirements.[109] Employees may also be fired for violating policy or committing misconduct, depending on local policies and individual circumstances. If the media widely reports on the employee's conduct, they may suffer from this notoriety in their private life. The media generally focuses on police, and only rarely descends upon call center staff or other first responders. Even when a dispatcher is a part of the cause of someone's death, the 9-1-1 center can often keep their name out of the public eye.[110] These rare notorious cases generally relate to use of force. As a result, we believe call center staff are far more likely to suffer reputational costs because they dispatched police rather than because they dispatched community responders.

On the positive side, cities can boost their reputation by becoming pioneers in public safety. Cities with community responder programs are receiving positive coverage in both local and national news outlets. Media outlets are recognizing cities simply for designing and approving new programs. Cities maximize their positive press through direct community engagement, press releases, billboards, and online videos.

---

[108] Joanna C. Schwartz, "Police Indemnification," *New York University Law Review* Vol. 89 No. 3, June 2014, accessed at https://www.nyulawreview.org/issues/volume-89-number-3/police-indemnification/.

[109] For example, an Arkansas court ordered a former dispatcher to pay $17.6 million in a default judgment. While the court found that the city was immune from lawsuit, the former dispatcher did not receive legal protection because she did not respond to the lawsuit or engage an attorney.
KTHV, "Ex-dispatcher to pay $17.6M in emergency response lawsuit," Oct 21, 2017, available at https://www.thv11.com/article/news/local/ex-dispatcher-to-pay-176m-in-emergency-response-lawsuit/91-485008198

[110] If the city does lay blame publicly on the individual dispatcher, it can negatively impact employee trust in the long term.

Conclusion

Cities face legal liability for first responders primarily via state law tort claims, federal civil rights law, and workers' compensation. Cities should assess the liability risk of sending community responders to low-risk calls not in a vacuum but in comparison to the liability risk of the status quo – handling those same calls by dispatching police.

In the case of traditional first response systems, cities rarely face liability for the actions of 9-1-1 call center staff. Cities face significant liability for law enforcement actions, paying hundreds of millions of dollars each year for cases in which police cause injury, generally for excessive use of force violations under federal civil rights law.

By contrast, community responder programs have not yet been the subject of any lawsuits for causing injury to a member of the public, though in most cities such programs have only a short track record.

In terms of tort claims, state courts would be unlikely to hold cities liable for a community responder program's policies or for failure to prevent harm by a third party. Courts could potentially hold community responders liable for a negligent vehicle accident or for other harm caused through gross negligence. Community responders are generally less likely to cause such harm compared to police. On the

whole, tort claims risk for dispatching community responders is smaller than the risk for dispatching police.

In terms of federal claims, cities are not likely to face lawsuits for community responders violating federal civil rights law or other statutes.

In sum, by sending community responders to low-risk calls in place of police, cities can significantly reduce their liability risk, especially if they establish clear protocols and contracts, institute careful training, and confer early and often with risk managers and city counsel.

Disclaimer

This report is intended only as guidance and does not constitute legal advice. The authors have attempted to make it as generally applicable and current as possible, but it is not comprehensive and it will not be regularly updated to reflect changes in law. City officials should consult with their own attorneys for authoritative legal advice.

Appendix: 50-State Tort Liability Sketch

In the chart below, we briefly introduce key statutes for each state that guide first responder tort liability. We comment on any notable deviations from the most common liability standard:

1. Immunity for policy-making and failure to prevent harm
2. Ordinary negligence for vehicle operation
3. Gross negligence for emergency care and other harm
4. Personal liability for intentional torts and bad faith actions
5. No punitive damages

We caution readers that this sketch is not meant to guide decision-making, since a deeper review can uncover a single court decision that turns state law on its head. We recommend that city officials consult with counsel for legal advice.

State	Key Statutes	Noted deviations from common approach above
Alabama	Alabama Revised Statutes §§ 11-47-190 – 192; 11-93-1 – 3	Personal injury damages are capped by statute to $100,000 per person or $300,000 per occurrence. § 11-93-2

State	Key Statutes	Noted deviations from common approach above
Alaska	Alaska Statutes § 09.65.070	Supreme Court of Alaska affirmed a jury verdict holding city liable for police failure to intervene where the police department (i) received a life-threatening call, (ii) knew the identity of the potential assailant, (iii) was able to identify the likely crime scene, (iv) failed to follow police procedure to investigate, and (v) failed to contact another officer to investigate. *Kotzebue v. McLean*, 702 P.2d 1309 (1985). The city did not raise on appeal the issue of whether § 09.65.070(d)(2) provides immunity for discretionary acts.
Arizona	Arizona Revised Statutes §§ 12-820 – 826; 9-500.02	Where police are performing a "community caretaking function," plaintiffs are only required to prove ordinary and not gross negligence to withstand summary judgment. *Sandoval v. City of Tempe*, 2015 WL 3916994 (Ariz. Ct. App. June 25, 2015).
Arkansas	Arkansas Statutes §§ 21-9-301 – 303	State statute provides complete immunity from tort liability except to the extent the city carries liability insurance. § 21-9-301. Like most jurisdictions, the Arkansas courts have excluded intentional torts from immunity. *See City of Fayetteville v. Romine*, 373 Ark. 318, 321 (2008).
California	California Government Code §§ 810-996.6	We did not identify cases that deviated significantly from the common approach.
Colorado	Colorado Revised Statutes §§ 24-10-101 – 24-10-120	Where a defendant asserts immunity under the Government Immunity Act, a trial court must, in the early stages of litigation, determine whether employee conduct was willful and wanton and may be required to hold an evidentiary *Trinity* hearing to so determine. *Martinez v. Estate of Bleck*, 379 P.3d 315, 322 (Col. Sup. Ct. 2016); *Finnie v. Jefferson Cnty School Dist. R-1*, 79 P.3d 1253 (Col. Sup. Ct. 2003). Mere allegations will not survive a motion to dismiss.
Connecticut	Connecticut General Statutes §§ 52-557b & 52-557n	In an unpublished opinion, a court permitted a case to survive summary judgment where a dispatcher failed to send a responder to investigate a 911 call in clear violation of established 911 procedures. The case turns on the city's "wholesale failure to provide any training to its dispatchers" but appears to have been complicated by the city's failure to provide evidence on summary judgment, the reason for which is unclear from the decision. *Gebo v. McDonald*, No. MMXCV095006226S, 2010 WL 4277743, at *3 (Conn. Super. Ct. Oct. 8, 2010).
Delaware	Delaware Code §§ 4010-4013	We did not identify cases that deviated significantly from the common approach.

State	Key Statutes	Noted deviations from common approach above
Florida	Florida Statutes § 768.28	In rare cases, a city might create a special relationship with a 911 caller by specifically assuring that help would arrive. For example, in *St. George v. City of Deerfield Beach*, 568 So. 2d 931 (Fla. 4th DCA 1990), the court found a special relationship could exist where responders (1) answered a 911 call by the decedent regarding an emergency medical situation but where decedent refused treatment, (2) left the scene and assured the decedent that they would return if the situation worsened, and (3) failed to return (because of the operator's negligence) when the decedent later called again. The court cited *DeLong v. County of Erie*, 60 N.Y.2d 296 (1983) in reaching this decision.
Georgia	Official Code of Georgia §§ 36-33-1 – 33-6	Municipal immunity is waived by a municipality securing insurance for the relevant conduct. This waiver is coterminous with the coverage. *Weaver v. City of Statesboro*, 653 S.E. 2d 765 (Ga. Ct. App. 2007).
Hawai'i	Hawai'i Revised Statutes § 663-10.5	Although the Hawaii Supreme Court has held that cities have neither sovereign nor statutory immunity and instead operate under ordinary tort principles, Hawai'i cases nonetheless apply the standard "special duty" rule, effectively granting immunity to municipalities in line with the common pattern. See *Kahale v. City & Cnty. of Honolulu*, 104 Hawai'i 341 (2004) City liability in tort is limited to its attributable percentage share of damages in tort, including for its vicarious liability for the acts or omissions of its employees. In effect, there is no joint and several liability for a city. § 663-10.5
Idaho	Idaho Code §§ 6-901 – 929	We did not identify cases that deviated significantly from the common approach.
Illinois	Illinois Compiled Statutes Chapter 745, Act 10	When analyzing a potential conflict between provisions of the Tort Immunity Act and the Emergency Telephone System Act, the Illinois Supreme Court held that the limited immunity of the ETSA supersedes the absolute immunity otherwise afforded by the TIA. *Schultz v. St. Clair County*, 2022 IL 126856 (2022). This holding was predicated on the more specific prescription of immunity and function performed under the ETSA than the more general "provide police protection service" application of the TIA.

State	Key Statutes	Noted deviations from common approach above
Indiana	Indiana Code §§ 34-13-1 – 25; 36-8-16.7-43	Whether a 9-1-1 call center committed wanton misconduct was a genuine question of material fact where the city's 9-1-1 system had a pattern of unaddressed prior reported problems. The case survived summary judgment and proceeded to trial, where the jury found in favor of the municipality. *Howard Cnty. Sheriff's Dep't & Howard Cnty. 911 Commc'ns v. Duke* 172 N.E.3d 1265, 1270 (Ind. Ct. App. 2021).
Iowa	Iowa Statutes §§ 670.1 – 14	We did not identify cases that deviated significantly from the common approach.
Kansas	Kansas Statutes §§ 75-6101 – 6120	We did not identify cases that deviated significantly from the common approach.
Kentucky	Kentucky Revised Statutes §§ 65.2001 – 2006	We did not identify cases that deviated significantly from the common approach.
Louisiana	Louisiana Revised Statutes §§ 13:5101-5113; 9:2798.1	There are no jury trials against municipalities for tort claims, unless waived by the municipality for specific categories of cases. *See Arshad v. City of Kenner*, 95 So.3d 477 (2012).
Maine	Maine Revised Statutes Tit. 14, §§ 8101 –8118	We did not identify cases that deviated significantly from the common approach.
Maryland	Maryland Courts and Judicial Proceedings §§ 5-301-5-524.	Although the municipality will generally indemnify and be held liable for actions of municipal employees, the Local Government Tort Claims Act requires suit be brought against employee directly. *Holloway-Johnson v. Beall*, 103 A.2d 720 (Md. 2014), *aff'd in part, rev'd in part*, 130 A.2d 406 (Md. 2016).
Massachusetts	Massachusetts General Law Chapter 258 §§ 2-14	G. L. c. 258 § 2 limits tort claim damages to an unusually low ceiling of $100,000 per plaintiff. Unlike Illinois, the domestic violence statute does not create a liability exception. In *Ford v. Town of Grafton*, 693 N.E.2d 1047 (App. Ct. 1998), the court held that while police clearly violated Chapter 209A Section 6, Section 10(h) of the MTCA immunized the city from liability for this violation.

State	Key Statutes	Noted deviations from common approach above
Michigan	Michigan Code of Laws §§ 691.1401-1419	As a general rule, Michigan codifies traditional common law categories for immunity in the Michigan Code of Laws. Unlike most states, Michigan does not provide a statutory damages cap, though like most states, it prohibits recovery of punitive damages. *Casey v. Auto Owners Ins. Co.,* 729 N.W.2d 277 (2006). Michigan applies a "governmental essence" test to determine whether an act is a governmental function. Applying that test to the facts of *Berkowski v. Hall*, 282 N.W.2d 813 (Mich. Ct. App. 1979), the court held that the operation of the subject EMS unit was not a governmental function.
Minnesota	Minnesota Statutes §§ 466.01-466.15	We did not identify cases that deviated significantly from the common approach.
Mississippi	Mississippi Code §§ 11-46-1 – 26	We did not identify cases that deviated significantly from the common approach.
Missouri	Missouri Statutes §§ 537.600-650	We did not identify cases that deviated significantly from the common approach.
Montana	Montana Code §§ 2-9-101-114	The driver of an emergency vehicle "is charged with a duty of due care under the circumstances" including the privileges granted by section 61-8-107(2) of the Montana Code [which exempt certain ordinary rules of the road] *Stenberg v. Neel*, 188 Mont. 333, 338 (1980). The court holds the standard is not gross negligence, but rather ordinary negligence modified by specific statutory provisions concerning what road rules emergency vehicles are permitted to ignore. *See also Eklund v. Trost*, 335 Mont. 112 (2006).
Nebraska	Nebraska Revised Statutes §§ 13-901 – 928; 86-441; 32-1232	Nebraska does not recognize the public duty doctrine. Instead, a plaintiff must prove the municipality or municipal employee owed a duty to him or her, that the duty was breached, and that an injury was proximately caused by that breach. *Drake v. Drake*, 260 Neb. 530, 537 (2000)
Nevada	Nevada Statutes §§ 41.0305-039	We did not identify cases that deviated significantly from the common approach.
New Hampshire	New Hampshire Revised Statutes §§ 507-B:1 – B:11	We did not identify cases that deviated significantly from the common approach.

State	Key Statutes	Noted deviations from common approach above
New Jersey	New Jersey Statutes §§ 59:1-1 – 12-3	9-1-1 operators are not liable for negligent mishandling of emergency calls but are liable if acting in wanton and willful disregard for the safety of others under the 9-1-1 immunity statute (N.J.S. 52:17C-10(d)). If the operators are found to have acted in such a manner, the city is immune under the Tort Claims Act (N.J.S. 59-1-1 – 12-3). *Turner v. Township of Irvington*, 230 N.J. Super. 274 (App. Div. 2013).
New Mexico	New Mexico Statutes §§ 41-4-1 – 4-30	The state supreme court is currently considering overlap of two statutes with different liability standards: *Ferlic v. Mesilla Valley Reg'l Dispatch Auth.*, No. 2:22-CV-633 DHU/KRS, 2023 WL 6443577, at *4 (D.N.M. Oct. 2, 2023).
New York	New York General Municipal Law § 50	In one isolated case, a court found that first responders who failed to respond had established a special duty toward an individual. In *DeLong v. Erie*, the court found that the city had established a special duty by advertising a new 9-1-1 number where residents could reach police, promising the caller to send an officer right away, and then failing to send the police at all while the caller risked death to wait for them. *DeLong* suggests that responders could potentially create a special duty by breaking an unusually explicit promise of assistance. Aside from *DeLong*, even in the same circuit, courts have refused to find that dispatch or 9-1-1 responders established a special duty in extreme circumstances, for example when 9-1-1 staff promised to send the police in a timely manner and then failed to send them. See: *DeLong v. County of Erie*, 89 A.D.2d 376, 455 N.Y.S.2d 887 (N.Y. App. Div. 1982); *Valdez v. City of New York*, 960 N.E.2d 356 (2011); *Riss v. City of New York*, 22 N.Y.2d 579 (1968); *Cuffy v. City of New York*, 69 N.Y.2d 255 (1987); *Estate of Sauickie v. City of New York*, 2018 WL 3222534 (S.D.N.Y. July 2, 2018); *Laratro v. City of New York*, 8 N.Y.3d 79, 82 (2006).

State	Key Statutes	Noted deviations from common approach above
North Carolina	North Carolina Statutes §§ 153A-435, 160A-485	By statute, cities in North Carolina can waive tort immunity through the purchase of tort liability insurance up to the amount of the insurance coverage (NC St. § 160A-485), and large cities—those over population 500,000—can waive immunity by passing a resolution to do so (NC St. § 160A-485.5). Counties can also waive immunity by purchase of insurance. (NC St. § 153A-435). The public duty rule would not apply to community responders in a city that has waived immunity and an ordinary negligence standard would apply. *Lovelace v. City of Shelby*, 351 N.C. 458, 461 (2000) "[W]e have never expanded the public duty doctrine to any local government agencies other than law enforcement departments when they are exercising their general duty to protect the public."
North Dakota	North Dakota Century Code §§ 32-12.1-01 – 15	We did not identify cases that deviated significantly from the common approach.
Ohio	Ohio Code §§ 2744.01 – 11	We did not identify cases that deviated significantly from the common approach.
Oklahoma	Oklahoma Statutes Title 51 §§ 151 - 258	We did not identify cases that deviated significantly from the common approach.
Oregon	Oregon Statutes §§ 30.260 – 300	We did not identify cases that deviated significantly from the common approach.
Pennsylvania	Pennsylvania Consolidated Statutes, Title 42 §§ 8541-8564	Sovereign immunity shields Commonwealth (state) employees from liability even for intentional tort claims. *Mitchell v. Luckenbill*, 680 F. Supp. 2d 672, 682 (M.D. Pa. 2010). However, it does not apply to municipal employees, who may be held personally liable for intentional torts that constitute “crime, actual fraud, actual malice or willful misconduct.” Pennsylvania Tort Claims Act at § 8550.
Rhode Island	Rhode Island General Laws §§ 9-31-1 – 13	Tort damages are capped by statute at $100,000 (§ 9-31-3) unless otherwise authorized by the legislature (§ 9-31-4).
South Carolina	South Carolina Code §§ 15-78-10 – 220	"By including police and fire protection as exceptions to the State's waiver of immunity, but not specifically listing emergency medical services, the Legislature did not intend to include emergency medical services as an exception to the waiver of immunity." *Curiel v. Hampton Cnty. E.M.S.*, 401 S.C. 646, 651, (Ct. App. 2012) (affirming summary judgment for motorist injured in collision with an ambulance).

State	Key Statutes	Noted deviations from common approach above
South Dakota	South Dakota Codified Laws §§ 3-21-1 – 22-27; §§ 21-32A-1 – 3	Municipalities enjoy sovereign immunity which is not waived except to the extent of any liability insurance. *Gabriel v. Bauman*, 847 N.W.2d 537 (2014); SDCL §§ 21-32A-1-3; *accord* SDCL § 3-22-17. The South Dakota Good Samaritan statute explicitly includes the operation of a motor vehicle in connection with providing "any emergency care and services" within its limitation on liability. *See In re Certification of a Question of Law from United States Dist. Court, Dist. of S. Dakota, S. Div.*, 779 N.W.2d 158 (2010) (holding immune from liability the act of a volunteer fire fighter driving his personal vehicle in response to an emergency fire call unless conduct giving rise to the injury was "willful, wanton, or reckless").
Tennessee	Tennessee Code §§ 29-20-101 – 408	We did not identify cases that deviated significantly from the common approach.
Texas	Texas Civil Practice & Remedies Code §§ 101.001 – 101.109	Though not a deviation from the common case, we note Texas revised the law in 2013 to identify 36 areas of government services for which they waive immunity to tort claims. Among these are (1) police and fire protection and control, (2) health and sanitation services, and (18) operation of emergency ambulance service. Community responder programs may fall within these exceptions to immunity depending on their implementation.
Utah	Utah Code §§ 63G-7-101 – 8-301	Utah waives immunity for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, § 63G-7-301(2)(i), inclusive of gross negligence. *Cunningham v. Weber County*, 506 P.3d 575, 581 (2022) (interpreting the statue to also apply to gross negligence).
Vermont	Vermont Statutes Title 24, §§ 901-903; Title 29, § 1403	Immunity is waived by a municipality securing insurance for the relevant conduct. This waiver is coterminous with the coverage. Vt. Stat. 29, § 1403.
Virginia	Virginia Code Title 8.01	By statute, there is no cap on damages for local government tort liability. Va. St. § 8.01-195.3.

State	Key Statutes	Noted deviations from common approach above
Washington	Revised Code of Washington Title 4, Ch. 4.96	The Washington Supreme Court held the public duty doctrine, which generally shields a city from liability, did not apply where a dispatcher, while on the phone with the caller for 15 minutes, assured help was on the way and confirmed the correct address multiple times, but emergency responders mistakenly went to the incorrect address and delayed providing medical help. The court held this interaction established a direct and particularized relationship giving rise to a common law duty of reasonable care. *Norg v. City of Seattle*, 200 Wash.2d 749, 761-63, 766 (2023). The Washington State Legislature recently passed House Bill 2088, which grants immunity to cities for injuries caused by "community-based intervention" to a person "experiencing a behavioral health crisis" where the act giving rise to injury is done or omitted "in good faith within the scope of [ ] employment." https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/House%20Passed%20Legislature/2088.PL.pdf?q=20240420113203
West Virginia	West Virginia Code § 29-12a-1 – 18	We did not identify cases that deviated significantly from the common approach.
Wisconsin	Wisconsin Statutes §§ 893.80 – 83	Wis. Stat. § 893.80(3) limits tort claim damages against public agencies to an unusually low ceiling of $50,000.
Wyoming	Wyoming Statutes §§ 1-39-101 - 121	Wyoming expressly provides for municipal tort liability by statute for negligence by peace officers (Wy. Stat. § 1-39-112) and by employees conducting public utilities operations (Wy. Stat. § 1-39-108) but not for firefighting (*City of Cheyenne v. Huitt*, 884 P.2d 1102 (1993)) or operation of an emergency communications system (*Rice v. Collins Communication, Inc.,* 236 P.3d 1009 (2010)).

Contact Us

We encourage you to reach out to us with feedback, corrections, updates, and questions.

Liability Report Contact

Amos Irwin
Liability@LawEnforcementAction.org

Learn how LEAP assists cities across America in designing community responder programs:

City Program Contact

Daut'e Martin
CommunityResponders@LawEnforcementAction.org

Cover photo credit: Anna Sullivan