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Public Protection: 911 Phone Systems

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❖ Introduction

911 emergency phone systems are fairly universally available in the United States today, giving the general public immediate access and communication to police, fire, and emergency medical services. It was only in 1967 that a Presidential Commission recommended that a single phone number be utilized nationwide to report emergencies, and the first 911 call was reportedly made on February 16, 1969 to the Haleyville, Alabama, police station.

Today's 911 systems are much more sophisticated, of course, and have had to cope with the spread of cell phones, smart phones, and Internet telephony, as well as attempt to provide services for communicating with the deaf, mute, and visually impaired. Sophisticated computerized equipment can usually pinpoint the location of callers, and can often quickly bring up additional useful information.

This article focuses on how the courts, both federal and state, have addressed potential civil liability for mishaps or problems in the providing of 911 phone services and the dispatch of emergency personnel in response to calls. At the end of the article, there is a brief listing of available and useful resources and references.

❖ General Rule: No Duty

Under the principles set down in [*DeShaney v. Winnebago County Dep't of Social Services*](#), #87-154, 489 U.S. 189 (1989), there is no general duty under federal civil rights laws to

protect individuals against private violence. Exceptions have been made in some instances where a special relationship--such as having a person in custody, or very specific promises of protection that are reasonably relied on--or the existence of a "state created danger" (or state enhanced one) is found. State law generally follows the same line of reasoning, and ordinarily imposes no specific duty to particular persons to provide police protection or other emergency services—with any duty being a general one owed to the public at large.

Illustrating that, in [*Donovan v. The Village of Ohio*](#), #3-08-0776, 397 Ill. App. 3d 844, 921 N.E.2d 1238 (2010), the court ruled that a village and its board could not be held liable for the death of a woman's husband based on the alleged electronic equipment failure of the 911 system. While state law imposed a duty to provide a 911 emergency call system, that duty is owed to the public at large, and not to specific individuals.

Similarly, in [*Brown v. Commonwealth of Pennsylvania Department of Health Emergency Medical Services Training Institute*](#), #01-3234, 318 F.3d 473 (3rd Cir. 2003), a federal appeals court ruled that a city which provided a 911 phone system to respond to emergency calls and dispatched emergency medical technicians to assist a one-year-old child choking on a grape was not liable for the child's death based on an alleged delay in arrival and the failure to successfully rescue him. The city had no constitutional duty to provide competent rescue services. A "shocks the conscience" legal standard applied to the plaintiffs' due process claim, rather than a standard of "deliberate indifference," and no liability was found.

In [*Perkins v. City of Rochester*](#), #06-CV-6585, 641 F. Supp. 2d 168 (W.D.N.Y. 2009), in response to a 911 call reporting a potentially suicidal armed teenager, a city dispatched both an ambulance and law enforcement officers. The teenager's mother subsequently filed a federal civil rights lawsuit claiming that a failure to properly respond to the call caused her daughter to be shot and injured by an officer. The plaintiff did not establish that the city had a special duty to her or her daughter, and the court ruled that there also was no showing of negligence on the part of the city, or of a policy or custom of failing to respond appropriately to calls for emergency assistance.

The California Supreme Court has ruled that there is no liability for a public entity or its employees based on the alleged delay or failure to dispatch emergency personnel and equipment in response to a 911 call for assistance. Exceptions under a statute for actions taken in bad faith or with gross negligence do not impose a general duty to provide assistance, but rather define the level of negligence needed to support liability once aid is actually rendered. [*Eastburn v. Regional Fire Protection Authority*](#), #S107792, 31 Cal. 4th 1175, 7 Cal. Rptr. 3d 552, 80 P.3d 656 (Cal. 2003).

In some instances, plaintiffs have tried to get around the general “no duty” rule by asserting an equal protection claim of some sort, alleging that their call or similar calls were not properly responded to on the basis of their race, gender, or some other protected category. In [Beltran v. Amador](#), #03-50427, 367 F.3d 299 (5th Cir. 2004), a 911 operator was found not liable for a man’s murder of his wife and daughter based on the classification of a call by the daughter as a family violence situation rather than a child injury in progress call. No violation of equal protection or due process was shown, and the operator was entitled to qualified immunity.

In another case, a court ruled that a city could not be held liable for damages for defects in a 911 system which made it more difficult for deaf persons to make emergency calls in the absence of a showing of intent to discriminate on the basis of disability. [Ferguson v. City of Phoenix](#), #96-17350, 157 F.3d 668 (9th Cir. 1998), cert. denied, #98-1619, 526 U.S. 1159 (1999).

Equal protection claims have generally been rejected in the absence of intentional discrimination. In [Brew v. City of Emeryville](#), #C-99-4720, 138 F. Supp. 2d 1217 (N.D. Cal. 2001), the court found that an alleged eight-minute response time to a 911 call reporting an attack on an African-American pool hall co-owner by his fellow investors, even if true, did not show denial of equal protection. The plaintiff did not show that any delay was racially motivated or that the response time was unreasonable.

On the other hand, one federal appeals court did state that giving domestic violence 911 calls lower priority than other 911 calls may constitute an equal protection claim. It found that the trial court did not adequately explore whether such a policy existed or if so, whether it was rationally based. [Fajardo v. County of Los Angeles](#), #96-55699, 179 F.3d 698 (9th Cir. 1999).

❖ **Special Relationships**

Courts may find liability for failure to provide protection or failure to do so properly when they find that a special relationship existed with the caller, imposing a special duty. This can arise if a person is taken into the custody or control of the officers, if a very specific promise of protection is made that the caller relies on to their detriment, perhaps foregoing other avenues of assistance or a chance to flee and escape based on a reasonable expectation that help is on the way, or if the agency voluntarily assumes the duty of providing protection to an individual.

In [Wallace v. Dean](#), #SC08-149, 3 So.3d 1035 (Fla. 2009), the Florida Supreme Court ruled that a claim against the sheriff for negligence resulting in wrongful death could

proceed when his office assumed a duty of care by responding to a woman's 911 call seeking emergency assistance, but failing to have an ambulance sent to her location.

In [*Upchurch v. McDowell County 911*](#), #12-0824, 750 S.E.2d 644 (W. Va. 2013), a man called a county 911 line stating that another man was threatening to kick in his door and harm him, and requesting assistance. The dispatcher learned that the threatening man had apparently left and told the caller that there was therefore no longer a need for an officer to come to his home. No officer was sent and no further call was made. It was later discovered that the threatening man had robbed and killed the resident. The dead man's estate sued the county and dispatcher for wrongful death. The West Virginia Supreme Court upheld summary judgment for the defendants, who did not owe a special duty of care to the caller.

No special relationship existed between municipalities which operated a 911 system and a caller who stated that he was being chased in a car by two men, one of whom had earlier threatened to kill him. The cities and sheriff therefore had no liability for caller's subsequent death. [*Pierre v. Jenne*](#), #4D01-709, 795 So. 2d 1062 (Fla. App., 4th Dist., 2001)

❖ **State-Created or Enhanced Danger**

Another basis for imposing liability can be when the actions or failure to act of 911 personnel either creates a new danger or enhances or heightens an existing one. Some courts have labeled this the "state-created danger" doctrine.

In one case, a police dispatcher allegedly improperly used his job facilities, including searching 911 databases, to find and kill his former girlfriend and her boyfriend, relying on motor vehicle and license plate registrations. The dispatcher's supervisor allegedly became aware of the dispatcher's improper searches and suspended him. During the suspension, two co-workers allegedly assisted him in obtaining information without authorization.

In a lawsuit brought by the estate of the boyfriend, "state-created danger" claims against the supervisor were rejected, since he did not "act affirmatively" to increase the danger, but the plaintiff sufficiently pled that the co-workers knew of the dispatcher's threats to make the boyfriend "pay" for dating his ex-girlfriend, and acted with deliberate indifference to the results of their acts in assisting him, which constituted "conscience-shocking" behavior. The appeals court further ruled, however, that the plaintiff should be allowed to amend her claims against the supervisor to attempt to better establish them. [*Phillips v. County of Allegheny*](#), #06-2869, 515 F.3d 224 (3rd Cir. 2008).

In [*Greyhound Lines v. Department of the California Highway Patrol*](#), #F063590, 213 Cal. App. 4th 1129, 152 Cal. Rptr. 3d 492 (2013), after an SUV collided with a center divider, a 911 operator allegedly told callers that California Highway Patrol officers were on the

way. The 911 operator did not put into the computer that the disabled SUV was blocking traffic lanes, as a result of which the call was assigned to a patrol unit that was further away, rather than one close by.

A Greyhound bus subsequently collided with the SUV, resulting in personal injury and wrongful death lawsuits by passengers. Greyhound argued the 911 operator's actions had helped cause the second accident. Rejecting liability, an intermediate California appeals court ruled that the California Highway Patrol had no duty to come to anyone's aid in the absence of a special relationship entered into because an officer's affirmative acts caused the peril or increased it, but no such special relationship existed with the injured bus passengers.

See also, [*May v. Franklin County Bd. of Com'rs*](#), #01-4000, 437 F.3d 579 (6th Cir. 2006). In this case, the officer may have had a duty to protect a woman who called 911 when she was restrained in her apartment by an attacker, but his decision, in investigating the call, to knock, look in a window, and leave when he received no response was not unreasonable. The court determined that there was a state-created danger theory of liability for private violence under substantive due process. Under this theory, there were three factors that the plaintiff had to establish. The appeals court held that the plaintiff failed to satisfy the first element: that affirmative acts by the state either created or increased the risk that the victim was exposed to a private act of violence. Although the actions were not faultless, they did not directly increase the victim's vulnerability to danger or place her in harm's way.

❖ **Governmental Immunity**

For some claims amounting to negligence under state law, which is always inadequate for federal civil rights liability, a state may make governmental immunity available to 911 entities and their employees. In some instances, the scope of the immunity may be exceeded by such things as a determination that personnel acted in a willful or wanton manner that caused harm.

In [*Wright v. Gaston County*](#), #COA09-792, 205 N.C. App. 600, 698 S.E.2d 83 (2010), an intermediate North Carolina appeals court held that a county 911 center provides a governmental function, protecting the health and welfare of the county's citizens. It also noted that the center's insurance policy provided that it does not waive the defense of governmental immunity. It further held, therefore, that a trial court acted properly in dismissing a lawsuit against the 911 operators in their official capacity, while letting claims against them in their individual capacity proceed. The lawsuit concerned the 911 center's allegedly inadequate response to calls concerning a child who had stopped breathing, and subsequently died.

Similarly, in *Myrick v. City of Cincinnati*, #C-080119, 2008 Ohio App. Lexis 5730 (Ohio App. 1st Dist.), in a 2-1 decision, an intermediate Ohio appeals court ruled that a city and its 911 dispatcher were not liable for negligence in advising a mother to stop following her estranged husband after he had kidnapped her 18-month old daughter, who he subsequently murdered. The dispatcher did not engage in willful and wanton misconduct (which might have been a basis for liability) in advising the mother to either pull over or to return to her home and wait for police to provide assistance. The city and dispatcher were therefore entitled to governmental immunity. See also *Barnes v. Antich*, 700 N.E.2d 262 (Ind. App. 1998) (Indiana city entitled to governmental immunity for death of man suffering heart attack who died after no ambulance was sent, despite four conversations with a 911 dispatcher promising that an ambulance was on its way).

In some states, different types of immunity may be provided for various activities, with specific statutes imposing particular responsibilities for such things as responding to domestic violence complaints. In *Moore v. Green*, #100029, 219 Ill. 2d 470, 848 N.E.2d 105 (2006), for instance, the Illinois Supreme Court ruled that police officers who allegedly failed to assist a domestic violence victim in response to a 911 call were not entitled to absolute immunity under state law on a claim that their inaction was willful and wanton conduct which caused her death when her husband subsequently shot her. A more specific limited immunity provision of a domestic violence statute applied instead, with an exception for willful and wanton conduct.

In *American National Bank & Trust Co. v. City of Chicago*, #86215, 192 Ill. 2d 274, 735 N.E.2d 551 (2000), the Illinois Supreme Court found that a complaint adequately alleged willful and wanton misconduct in a 911 liability case involving a response to a call about an asthma attack.

In another Illinois case involving a response to a call about an asthma attack, a jury awarded \$50 million to the parents of a youth who died of an asthma attack after a 911 emergency call was made. There was a response time of up to 8-1/2 minutes by paramedics stationed at a firehouse one block away, alleged understaffing of dispatchers, and a failure to provide CPR instructions. All of these failings were pointed to, based on which jury found “willful and wanton” misconduct. *Gant v. City of Chicago*, #97-L-3579 (Nov. 30, 2000, Cir. Ct., Cook Co., Ill.), reported in *The National Law Journal*, p. A12 (Dec. 18, 2000). The city later won a retrial in the case, but the plaintiff parents and the city settled the case for \$2.7 million prior to the trial date. *Gant v. City of Chicago*, #97-L-3579, Circuit Ct., Cook County, Ill., reported in *The National Law Journal*, p. A6 (April 23, 2001).

❖ Resources

The following are some useful resources related to the subject of this article.

- [Enhanced 9-1-1](#). Wikipedia article.
- [Enhanced 9-1-1 Wireless Services](#), Federal Communication Commission (FCC).
- [National Emergency Number Association website](#).
- [Public Protection: 911 Phone Systems](#). AELE Case Summaries.
- [9-1-1 Dispatch Magazine On-Line](#).
- [9-1-1 Magazine.com](#).
- [9-1-1](#). Wikipedia article.
- [Wireless 911 Services Guide](#), Federal Communications Commission (FCC Jan. 17, 2013).

❖ Prior Relevant Monthly Law Journal Articles

- [Public Protection: Witnesses](#), 2009 (4) AELE Mo. L. J. 101.
- [Public Protection: Informants](#), 2009 (5) AELE Mo. L. J. 101.
- [Public Protection: Injured Crime and Accident Victims](#), 2009 (8) AELE Mo. L. J. 101.
- [Public Protection: Arrestees](#), 2011 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101.
- [Public Protection: Intoxicated Persons](#), Part 1, 2013 (3) AELE Mo. L. J. 101.
- [Public Protection: Intoxicated Persons](#), Part 2, 2013 (4) AELE Mo. L. J. 101.
- [Public Protection - Part 1: The Physically Ill](#), 2013 (5) AELE Mo. L. J. 101.
- [Public Protection: Part Two – The Mentally Ill or Deranged](#), 2013 (6) AELE Mo. L. J. 101.

❖ **References:** (*Chronological*)

1. [Duty to All – Duty to No One: Examining the Public-Duty Doctrine and Its Exceptions](#), by Karen J. Kruger, Police Chief (May 2007).
2. [Liability Issues in a VOIP Environment](#), by Colleen Boothby, Business Communications Review (Feb. 2005).
3. [Misuse and Abuse of 911](#), by Rana Sampson, Center for Problem-Oriented Policing (Aug. 2004).

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