



Citizen Corps Volunteer Liability Project

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Citizen Corps Volunteer Liability Project Goal



Section 1: Overview of Citizen Corps Volunteer Liability Project

Support state and local Citizen Corps Councils and Programs with tools and best practices related to liability issues, including but not limited to liability issues arising from the training of citizens and volunteers to support emergency responders.

“Liability” used for all legal responsibility arising out of an activity.

Project Activities

Section 1: Overview of Citizen Corps Volunteer Liability Project

- **Needs assessment**
- **Legal research tools**
- **Sample legislative language**
- **Crossing state lines**
- **Interface with efforts addressing volunteer health care providers**

Needs Assessment

Section 2: Needs Assessment Results

Purpose of needs assessment:

- Identify present activities related to volunteer liability
- Identify biggest areas of volunteer liability concern
- Determine what types of information about volunteer liability Citizen Corps Councils and Programs need and how it can be most effectively provided

Response:

- 8 state/territory councils (“State”)
- 153 local/tribal/county councils (“Local”)

Needs Assessment

Section 2: Needs Assessment Results

- Information resources needed:
 - State specific information for websites
 - Customizable electronic classroom presentations
- Preferred source of information
 - States → National Citizen Corps
 - Locals → State Citizen Corps Councils
 - Least preferred source of information is doing legal research
- Important topics for model legislative language
 - Integration of volunteers into state EMAC response (licensing, liability and injury compensation)
 - Protection of volunteer health care providers
 - Protection of incorporated councils and training/exercise logistical support personnel

Important Legal Issues

Section 3: Important Issues

- **Volunteer Injury**
- **Liability of Individual Volunteers**
- **Liability of Nongovernmental Entities**
- **Licensing and Credentialing**
- **Emergency Management Assistance Compact**
- **Federal Protection**

Volunteer Injury

Section 3: Important Issues: Volunteer Injury

Volunteer injury/illness/death

- Is anyone legally responsible to pay benefits?
- Who is responsible to pay benefits?
 - Volunteer's regular employer (workers' compensation)
 - Local government using the volunteer?
 - Organization registering the volunteer?
 - State in which the volunteer is registered and deployed?
- What benefits are provided?
 - Regular workers compensation through employer?
 - Special benefits provided specifically for emergency workers?
- What triggers coverage?
- Any qualifiers?
 - Excess over other available benefits?
 - Contingent on state funding of benefit program?

Volunteer Injury Approaches

Section 3: Important Issues: Volunteer Injury

Separate compensation system in emergency management statute

- Washington State RCW §38.52.190, 200 et. seq.
 - Working as a registered emergency worker for an approved local organization for emergency management.
 - Funds must be specially appropriated.
 - Benefits reduced by other payable benefits.

RCW §38.52 is the Washington Emergency Management Statute

Volunteer Injury Approaches

Section 3: Important Issues: Volunteer Injury

Opt into Workers' Compensation Coverage by Political Subdivision

- Virginia §65.2-101. Definitions.

"Employee" means: I. Except as provided in subdivision 2 of this definition **volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title** or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title."

§65.2-101 is part of the Virginia Workers' Compensation Statute

Volunteer Injury Approaches

Section 3: Important Issues: Volunteer Injury

Treated as state employees, maybe.....

- Rhode Island Title 30 Ch. 30 §30-15-15

“(c) **In the absence of any other benefits** as provided by law, all **disaster response workers** who shall be killed or sustain disability or injury **while in training for or on disaster response duty** shall be **construed to be employees of the state**, any other provisions of the law to the contrary notwithstanding, and shall be compensated in like manner as state employees are compensated

(d) As used in this section, the term "**disaster response worker**" shall include any full or part time paid, **volunteer**, or auxiliary employee of this state, other states, territories, or possessions, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, **or any agency or organization or any private person, firm or corporation performing disaster response services** at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.”

Title 30 Ch. 30-15 is the Rhode Island Emergency Management Statute

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

Volunteers' direct liability to third parties for negligent or intentional acts

- Professional liability (especially health care professionals) for negligent acts and omissions
- Motor vehicle liability
- Liability for victim injury during patient triage
- Liability for victim injury during search and rescue
- Liability for property damage

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

Virginia State Government Volunteers Act

- **§2.2-3601 Definitions:** "Volunteer in state and local services" shall include, but shall not be limited to, any person who serves in a **Medical Reserve Corps (MRC)** unit or on a **Community Emergency Response Team (CERT)** while engaged in emergency services and preparedness activities as defined in §44-146.16."
- **§2.2-3602 Status of Volunteers** "D. Individuals involved in emergency services and preparedness activities ... shall be considered volunteers in state and local services and shall be accordingly entitled to the benefits conferred in this chapter. ... [S]uch individuals shall be deemed to be regular-service volunteers."
- **§2.2-3605 Volunteer benefits** "D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a **Medical Reserve Corps (MRC)** unit or on a **Community Emergency Response Team (CERT)**, shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff."

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

Virginia Disease Prevention and Control Statute

§32.1-48.016 Immunity from liability “Any person, including a person who serves in a **Medical Reserve Corps (MRC)** unit or on a **Community Emergency Response Team (CERT)**, who, in good faith and in the performance of his duties, acts in compliance with this article and the Board of Health's regulations shall not be liable for any civil damages for any act or omission resulting from such actions unless such act or omission was the result of gross negligence or willful misconduct.”

§32.1-48.016 is part of Title 32.1 of the Virginia Code, Health

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

Virginia §44-146.23. Immunity from liability.

“A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or **private agencies**, nor, except in cases of willful misconduct, **public or private employees**, nor **representatives of any of them**, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. For the purposes of the immunity conferred by this subsection, **representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).**”

§44-146.23 is part of Title 44 of the Virginia Code, Ch. 3.2, Emergency Services and Disaster Law

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

Arizona §26-314. Immunity of ... emergency workers

“C. **Emergency workers*** engaging in emergency management activities or emergency functions under this chapter ... shall have the same degree of responsibility for their actions, and enjoy the **same immunities and disability workers' compensation benefits as officers, agents and employees of the state and its political subdivisions** performing similar work. **This state** and its departments, agencies, boards and commissions and **all other political subdivisions that supervise or control emergency workers** engaging in emergency management activities or emergency functions under this chapter or title 36, chapter 6, article 9 **are responsible for providing for liability coverage, including legal defense, of an emergency worker if necessary.** Coverage is provided if the emergency worker is acting within the course and scope of assigned duties and is engaged in an authorized activity, except for actions of willful misconduct, gross negligence or bad faith.”

** Includes registered volunteers per §26-301.*

§26-314 is part of Arizona Code Title 26, Ch. 2, Emergency Management

Liability of Individual Volunteers

Section 3: Important Issues: Volunteer Liability

North Carolina Volunteer Protection Act

- **§1-539.10. Immunity from civil liability for volunteers.**
Added “a volunteer engaged in providing emergency services” to its volunteer protection act.
- **§1-539.11. Definitions.**
 - Defines “**emergency services**” as “the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions.”
 - List of volunteer emergency services functions includes “services performed as a function of a **Medical Reserve Corps (MRC) unit** or a **Community Emergency Response Team (CERT)**, and other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.”
 - Definition of “**volunteer**” includes “any person providing emergency services without any financial gain.”

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Vicarious liability of entities that deploy or host volunteers for the volunteers' acts

- Not based on the entity's own negligence
 - Hospitals that host volunteer health care providers during an emergency
 - Nonprofit organizations that deploy their own volunteers

Direct liability of entities that register, screen, credential, train or host volunteers

- Based on the entity's own negligence
 - Inadequate screening/background checks
 - Failure to verify credentials
 - Failure to supervise

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Liability of businesses and nonprofit organizations that provide their employees, equipment, vehicles, premises and supplies in an emergency

- Workers' compensation for employees
- Liability to third parties sheltered on their premises
- Liability to third parties for acts of employees
- Liability to third parties for injuries/damages due to defects in materials, equipment or supplies

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Georgia Senate Bill 305 – Not yet passed

- Expands existing statute (§51-1-29.2) that grants immunity to persons acting to prevent, minimize, and repair injury and damage resulting from catastrophic acts of nature to:
 - Include emergencies arising from biological, chemical, or nuclear agents, terrorism, pandemics or epidemics of infectious disease, as well as catastrophic acts of nature.
 - Include **services or goods** provided in **preparation for or anticipation of an emergency**, as well as during an emergency.
 - In addition to protecting a natural person, also protects an **association, fraternal organization, private for profit entity, not for profit entity, religious organization, and charitable organization and the officers, directors, employees, and agents of such associations, organizations, and entities.**

The statute to be amended, 51-1-29.2, is part of Title 51, Torts, of the Georgia Code

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Delaware Code Title 20, §3129 Immunity from Civil Liability

Protects from liability for the death of or injury to persons, or damage to property “any **person, firm, corporation or other entity** performing work and/or furnishing material pursuant to a contract (oral or written) with the State ... or with any other political subdivision of the State or with any agency of any of them, **entered into as a result of the declaration** by the Governor of an emergency order **or entered into as a part of efforts to comply with this chapter.**”

Also stay tuned for: Revised Code of Washington §38.52.180

§3129 is part of Delaware Code Title 20, Ch. 31, Emergency Management

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Real and Personal Property

North Carolina §166A-15. No private liability.

“Any person, **firm or corporation** owning or controlling **real or personal property** who, voluntarily or involuntarily, knowingly or unknowingly, **with or without compensation**, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of **sheltering, protecting, safeguarding or aiding in any way persons** shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes.”

§166A-15 is part of Chapter 166A of the North Carolina Code, the North Carolina Emergency Management Act

Liability of Nongovernmental Entities



Section 3: Important Issues: Nongovernmental Entity Liability

Real Property

Florida §252.52 Liability

- Protects from liability “Any **person or organization, public or private, owning or controlling real estate or other premises**”
- Must allow use of the property “**voluntarily and without compensation other than payment or reimbursement of costs and expenses**”
- Protects during use of property for the purpose of “sheltering persons during an **actual, impending, mock, or practice emergency**”
- Excludes protection for “gross negligence or willful and wanton misconduct”
- Any such person or organization who provides such shelter space for compensation shall be deemed to be an instrumentality of the state or its applicable agency or subdivision for the purposes of s.768.28.
(Florida Tort Claims Act)

Licensing and Credentialing

Section 3: Important Issues: Licensing and Credentialing

Licensing

- Retired health care workers
- Licensed professionals responding in a state where they are not licensed
 - Health care practitioners
 - Architects and engineers

Credentialing

- Education
- Experience



Licensing and Credentialing

Section 3: Important Issues: Licensing and Credentialing

Indiana Code §10-14-3-15 Governmental functions; liability; emergency management workers

“(b) Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who, in the course of performing duties as an emergency management worker, practices a professional, mechanical, or other skill during a disaster emergency.”

§10-14-3-15 is part of Title 10, Art. 14, Ch. 3 of the Indiana Code, Indiana Emergency Management and Disaster Law

Licensing and Credentialing

Section 3: Important Issues: Licensing and Credentialing

Minnesota §12.42 Out of State License Holders; Powers; Duties

“During a declared emergency, a person who holds a license, certificate, or other permit issued by a state of the United States, the District of Columbia, or a province of Canada evidencing the meeting of qualifications for professional, mechanical, or other skills, may render aid involving those skills in this state when such aid is requested by the governor to meet the needs of the emergency. The license, certificate, or other permit of the person, while rendering aid, has the same force and effect as if issued in this state, **subject to such limitations and conditions** as the governor may prescribe.”

§12.42 is part of Chapter 12 of the Minnesota Code, Minnesota Emergency Management Statute

Emergency Management Assistance Compact



Section 3: Important Issues: EMAC

Emergency Management Assistance Compact

- An interstate compact among the 50 states, D.C., Puerto Rico and the Virgin Islands, to provide state to state assistance when any type of disaster occurs.
 - Governor of the affected declares a state of emergency
 - Affected state requests the help it needs.
- Administered by National Emergency Management Association (NEMA)
- Ratified by Congress as an Interstate Compact in 1996
- Addresses:
 - Licensing
 - Liability
 - Compensation of injured members of a responding states emergency forces

EMAC Licensing



Section 3: Important Issues: EMAC

EMAC Article V - Licenses and Permits

“Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be **deemed licensed, certified, or permitted by the state requesting assistance** to render aid involving such skill to meet a declared emergency or disaster, **subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.**”

EMAC Liability Protection



Section 3: Important Issues: EMAC

Emergency Management Assistance Compact Article VI – Liability

“Officers or employees of a party state rendering aid in another state pursuant to this compact **shall be considered agents of the requesting state for tort liability and immunity purposes;** and **no party state or its officers or employees** rendering aid in another state pursuant to this compact **shall be liable on account of any act or omission in good faith** on the part of such forces while so engaged **or on account of the maintenance or use of any equipment or supplies** in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.”

- Limiting language for Citizen Corps purposes: “Officers or employees of a party state”

EMAC Liability Protection

Section 3: Important Issues: EMAC

Who is an “officer or employee” is a matter of state law

- The responding state’s law must support characterization of the volunteer as an “employee” and as part of the state’s emergency forces, and
- The requesting state’s courts must accept that characterization if a lawsuit is filed in the requesting state’s courts

EMAC Liability Protection

Section 3: Important Issues: EMAC

Indiana Code §10-14-3-19

Mobile support units

- Mobile support units can include individuals who are not employed, or who are employed by a business or organization.
- (c) “While on duty for **training, an exercise, or a response**, an individual serving as a member of a mobile support unit, **whether within or outside Indiana**:...
 - (2) If the individual is **not an employee** of the state or a political subdivision of the state, the individual is entitled to **the same rights and immunities that are provided for an employee of the state.**”

EMAC Liability Protection

Section 3: Important Issues: EMAC

Indiana Code §10-14-3-19

Mobile support units, continued

- “(d) If a mobile support unit is deployed **outside Indiana under the emergency management assistance compact**, an individual serving as a member of the mobile support unit who is not an employee of the state **is considered an employee of the state for purposes of the compact**. An individual described in this subsection is **considered an emergency management worker for purposes of section 15** of this chapter.”
- The state **may** (it is optional):
 - compensate non-governmental employees who are members of a mobile support unit, and
 - reimburse members’ employers for various expenses, including benefits related to a member’s injuries and damage to supplies and equipment.

EMAC Liability Protection

Section 3: Important Issues: EMAC

Other statutes provide for compensation and immunity of non-employee emergency management workers

- **Nevada NRS §414.080 Mobile support unit** \$10 per day and to the same rights and immunities as are provided by law for the employees of the State.
- **Tennessee §58-2-113. Emergency management support forces or mobile reserve unit.** The same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by TEMA.
- **Illinois (20 ILCS 3305/8) §8 Mobile Support Teams** At least one dollar per year compensation from the State.
- **Mississippi §33-15-15. Mobile support units.** Compensation by the state at a rate commensurate with their duties and responsibilities and to the same rights and immunities as are provided by law for the employees of the state.

EMAC Liability Protection

Section 3: Important Issues: EMAC

- **Vermont Tit. 20 Part 1 Ch. 1 §7 Mobile support units**
 Appropriate compensation as fixed by the commissioner or designee with the approval of the governor, and to the same rights and immunities as are provided by law for the employees of this state.
- **West Virginia §15-5-7. Mobile support units.** Compensation by the state at the same rate as is paid members of circuit court juries and to the same rights and immunities as are provided by law for the employees of this state.
- **Florida Title XVII Ch. 252 §252.41 Emergency management support forces** The same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by the division.
- **Georgia Code §38-3-26. Mobile support units** Adequate compensation incidental to their employment by the state for their services and to the same rights and immunities as are provided by law for the employees of this state.

EMAC Compensation Benefits

Section 3: Important Issues: EMAC

Emergency Management Assistance Compact Article VIII - Compensation

“Each party state shall provide for the payment of compensation and death benefits to injured members of **the emergency forces of that state** and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, **in the same manner and on the same terms as if the injury or death were sustained within their own state.**”

Federal Protection

Section 3: Important Issues: Federal Protection

- **Volunteer Protection Act of 1997**
 - Doesn't protect organizations
 - Doesn't protect people who are being paid
 - Volunteer can be sued by sponsoring organization
 - States can limit protection significantly and opt out in cases involving only state residents
 - Gross negligence; willful, wanton and reckless misconduct; criminal actions and others excluded
 - Operation of motor vehicles, watercraft and aircraft excluded
 - Joint and several liability eliminated only for non-economic damages
- **Federalized Volunteers**
 - Federal Tort Claims Act
 - Federal Employees Compensation Act

Public/Private Legal Preparedness Initiative

- Project goal: improve emergency preparedness and response by removing the legal barriers that hinder collaboration between the private, nonprofit, and public sectors.
- A major objective: extend Good Samaritan liability protection to **business and non-profit entities** assisting in community emergencies
 - Template for expanded legislation
 - Pilot state coalition projects in Georgia and North Carolina to support the extension of Good Samaritan law liability protection to those business and non-profit entities that provide emergency assistance in these states.

Project website: <http://nciph.sph.unc.edu/law/>

Public/Private Legal Preparedness Initiative Four Template Elements

1. Extend Good Samaritan protection to business and non-profit entities acting in good faith during an emergency.
2. Extended coverage would be triggered by the Governor's emergency declaration.
3. Coverage would apply only to emergency activities conducted in coordination with the State.
4. Coverage would also include pre-event planning and training activities that take place prior to the declared emergency.

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)



Section 4: Legislative Efforts: UEVHPA

Model Legislation

- UEVHPA facilitates *volunteer health care practitioner* involvement in declared emergencies
- UEVHPA adopted by National Conference of Commissioners of Uniform State Laws (NCCUSL) in 2006
 - NCCUSL develops models for uniform legislation
 - Model uniform laws promote consistency among states' laws

Full text of UEVHPA 2006 "Final Act" online at:

<http://www.uevhpa.org/DesktopDefault.aspx?tabindex=1&tabid=55>

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)



Section 4: Legislative Efforts: UEVHPA

UEVHPA Facilitates Volunteer Health Provider Participation in State EMAC Emergency Forces

Section 9. Relation to Other Laws

(a) This [act] does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this [act].

Except as otherwise provided in subsection (b), this [act] does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) [Name of appropriate governmental agency or agencies], pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)



Section 4: Legislative Efforts: UEVHPA

- 2006 - UEVHPA adopted by NCCUSL *without* Sections 11 (civil and vicarious liability) and Section 12 (workers' compensation coverage)
- In July 2007 NCCUSL will reconsider Sections 11 and 12

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)



Section 4: Legislative Efforts: UEVHPA

Section 11 Volunteer HCP Liability Protection

- Protects **source, coordinating and host entities** from vicarious liability, and
 - **Alternative A**
 - Volunteer HCP not liable for acts or omissions within scope of responsibilities.
 - **Alternative B**
 - Volunteer HCP not liable, but deemed to be agent or employee of state, and state may be liable if allowed by its tort claims act.
 - **Alternative C**
 - Volunteer HCP not liable if compensated no more than \$500 per year for services. Compensation excludes salary continuation and expense reimbursement.

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)



Section 4: Legislative Efforts: UEVHPA

Section 12 Workers' Compensation Coverage

- Volunteer HCP is deemed to be an employee of the state for purposes of workers' compensation coverage
- Volunteer may elect to receive coverage otherwise available, i.e. through regular employer

Full text of draft Section 11 Alternatives A, B and C, and draft Section 12 online: <http://www.law.upenn.edu/bll/archives/ulc/uiehsa/2007apr6draft.htm>

Some States with Current or Recent Legislative Efforts

Section 4: Legislative Efforts: Other

- Arizona
- Arkansas
- California
- Georgia
- Hawaii
- Illinois
- Iowa
- Kentucky
- Massachusetts
- Mississippi
- New Mexico
- New York
- Oklahoma
- Rhode Island
- Tennessee
- Texas
- Virginia
- Washington
- West Virginia

Effect of Case Law on Statutory Protection



Section 5: Case Law

California Good Samaritan Law **Health and Safety Code §1799.102**

“No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.”

Effect of Case Law on Statutory Protection

Section 5: Case Law

California Good Samaritan Law Health and Safety Code §1799.102

“No person who in good faith, and not for compensation, renders **emergency care** at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.”

Van Horn v. Torti

California Court of Appeals, Second Appellate District
March 21, 2007

Effect of Case Law on Statutory Protection

Section 5: Case Law

Van Horn v. Torti

- Defendant Torti removed Plaintiff Van Horn out of a vehicle following a motor vehicle accident - afraid the car would catch fire or “blow up”
- Van Horn claimed serious injuries due to Torti’s actions
- **Trial court** held that H&S §1799.102 protected Torti from liability as a matter of law and granted her summary judgment
- **Court of Appeals** reversed the trial court and held that §1799.102 did not protect Torti because “emergency care” refers to “emergency medical care rendered at the scene of a medical emergency.”
 - Definition of “emergency” in H&S Code §1797.70 includes “medical”
 - Placement of §1799.102 in Division of H&S Code entitled “Emergency Medical Services”
 - Legislative history – promote emergency medical services

Effect of Case Law on Statutory Protection

Section 5: Case Law

Van Horn v. Torti

Court of Appeals stated that the applicable standard is *Williams v. State of California*, 34 Cal. 3d 18 (1983):

“Also pertinent to our discussion is the role of the volunteer who, having no initial duty to do so, undertakes to come to the aid of another – the ‘good Samaritan.’ He is under a **duty to exercise due care in performance** and is liable if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking. [Citation.]”

- *Torti* decision was appealed to California Supreme Court in April 2007
- *Torti* does not affect protection of “Disaster Service Workers”

Addressing Volunteer Liability

Section 6: What can you do?

1. Go to your state's online statutes and find out how your state law protects (and doesn't protect) emergency volunteers (including nongovernmental organizations)
2. Ask your state attorney general for an opinion about legal protection for emergency volunteers
3. Find a legal advisor for your council
4. Talk to other local councils, your state council, councils from other states, your local government, and nongovernmental organizations with similar interests
5. Form a volunteer liability working group
6. Identify state legislators who are interested in disaster
7. Learn from Connecticut and Washington speakers

Distribution of Liability Information (Local)



Appendix: Survey Results: Present Activity

- Sixty-two percent of the responding local councils reported that they distribute liability/injury benefit information to volunteers and nongovernmental partners:
 - Yes – 90
 - No – 37
 - Don't know – 18
- Twenty-six percent of the responding local councils reported that they receive liability related information from the state citizen corps manager
 - Yes – 38
 - No – 66
 - Don't know - 39

Distribution of Liability Information (State)



Appendix: Survey Results: Present Activity

- **Fifty percent** of responding state councils reported that they provide local Citizen Corps councils and programs with liability protection and injury benefit information for dissemination to **volunteers**.
- **Twenty-five** percent of responding state councils reported that they provide local Citizen Corps councils and programs with liability protection information for dissemination to potential **non-governmental partners**

Ranking Questions

Appendix: Survey Results: Present Activity

Some of the following questions required respondents to rank each of several responses on a scale of one to five, with one designating a matter of less importance, and five designating a matter of great importance.

The actual numerical rankings will not be shown. Results will be depicted from top of the slide (most important) to the bottom (least important). Any rankings lower than 2.5, indicating matters of less importance, will be designated on the slides by placing them in *lighter italics*.

Barriers to Distributing Liability Information - Ranked

Appendix: Survey Results: Present Activity

Local

- *Council concerned about own liability for providing information*
- *Other (lack of information to give, lack of protection to offer, concern at losing volunteers)*
- *Lack of concern about liability among volunteers and nongovernmental partners*
- *Lack of time*
- *Council leaders do not want to raise the issue*

State

- *Lack of time for locals to address liability*
- *Lack of concern about liability among volunteers and nongovernmental partners*
- *Councils concerned about their own liability for providing info*
- *Council leaders do not want to raise the issue*

Legislative Advocacy Activities

Appendix: Survey Results: Present Activity

Local council involvement in legislative advocacy

- Yes – 24
- No – 91
- Don't know – 21

State council involvement in legislative advocacy

- Yes – 4
- No – 2
- Don't know – 0

Barriers to Legislative Advocacy Ranked



Appendix: Survey Results: Present Activity

Local council perceived barriers to advocacy

- Lack of time
- Other (*trial lawyers, nonprofit status, lack of interest by others, scarce resources, feeling of futility, inaccurate perception that existing protection is adequate*)
- Lack of knowledge
- Cannot/do not want to
- Lack of concern by volunteers and nongovernmental entities
- Lack of concern by emergency response
- *State law adequate*

State council perceived barriers to advocacy

- *Lack of concern by volunteers and nongovernmental entities*
- *Lack of knowledge*
- *Lack of time*
- *State law adequate*
- *Cannot/do not want to*

Most Frequently Heard Liability Concerns – Ranked (Local)



Appendix: Survey Results: Concerns

- Nongovernmental entities
 - Liability to third parties
 - Injuries to employees
- Trainers
 - Liability to volunteers who are injured
- Volunteers
 - Injury/illness
 - Liability to third parties
- Trainers
 - Liability to third parties for injuries caused by volunteers
- *Local governments*
 - *Volunteer interference with response/source of liability*

Most Frequent Source of Liability Concerns - Ranked (Local)

Appendix: Survey Results: Concerns

- Emergency managers
- Citizen volunteers
- Trainers/firefighters/police/law enforcement
- Health care professionals
- Local government officials
- Other professionals
- *Nongovernmental entities*

Impact of Liability Issues on Recruitment Efforts - Ranked (State)



Appendix: Survey Results: Concerns

- Difficulty recruiting licensed professionals or skilled workers as volunteers
- Difficulty recruiting nongovernmental partners
- Difficulty recruiting citizen volunteers
- *Difficulty recruiting trainers*

Impact of Liability Issues on Use of Volunteers - Ranked (State)



Appendix: Survey Results: Concerns

- Potential liability to third parties for volunteer actions limits local government use of volunteers
- Potential liability for injury to volunteers limits local government use of volunteers
- Local government agencies' concerns about liability for volunteer actions makes it more difficult to effectively integrate Citizen Corps and its programs into local emergency response
- Potential liability reduces local government formation of partnerships with nongovernmental partners

How Councils Want to Receive Liability Information - Ranked

Appendix: Survey Results: Needs

Local

- Information from state council
- Meetings, conferences, training
- Discussions with other councils
- Consult with attorney
- *Do own legal research*

State

- Information from National Citizen Corps
- Meetings, conferences, training
- Consult with attorney
- Discussions with other councils
- *Do own legal research*

Other: Information from National Citizen Corps; National Citizen Corps newsletter; Information about how other councils handle liability

How Local Councils Want to Distribute Information - Ranked

Appendix: Survey Results: Needs

- Classroom training and orientation
- Council website
- Links to other websites
- Handouts and pamphlets for distribution
- Online meetings/seminars
- *Included in waiver form or memorandum of understanding*

Liability Information Resources Councils Want

Appendix: Survey Results: Needs

Local councils' statements of local needs

- State specific information that can be published on websites and downloaded
- Classroom presentation on liability issues in electronic format that can be customized and used in training
- General guidelines for researching state law
- Web meetings or web seminars for government and community leaders

State councils' impressions of local needs

- State specific information that can be published on websites and downloaded
- Classroom presentation on liability issues in electronic format that can be customized and used in training
- Web meetings or web seminars for government and community leaders
- *General guidelines for researching state law*

Access to Legal Advice

Appendix: Survey Results: Needs

- State councils reporting access to legal advice - 50%
- Local councils reporting access to legal advice – 16%

Most Important Topics for Model Legislative Language

Appendix: Survey Results: Needs

Local

- Liability protection for volunteer health care providers (HCP's)
- Volunteer injury/death benefits
- Trainer liability protection
- Nongovernmental partner liability protection
- Credentialing and reciprocity for professional level volunteers from other states

Other: Protect incorporated councils; protect management; protect people who provide logistical support to training/exercise; retired HCP's

State

- Credentialing and reciprocity for professional level volunteers from other states
- Liability protection for volunteer health care providers
- Volunteer Injury/death benefits
- Nongovernmental partner liability protection
- Trainer liability protection

Other: clarification of EMAC protection (and protection by similar regional compacts); ways to integrate with EMAC protection