

Police Liability

West Virginia Coalition

In recent years liability lawsuits have had a growing impact on the understanding of the responsibility for effective law enforcement in domestic violence cases.

Across the country courts are finding that, under certain circumstances, law enforcement officials and their departments can be held liable to provide effective intervention and protection of victims of domestic violence. In a number of cases the failure to do so has resulted in awards of millions of dollars.

The determining phrase in these liability suits has been "special relationship" and did one exist between the victim and law enforcement. This is also commonly referred to as "public duty doctrine." This doctrine holds that law enforcement officers owe a duty to the general public, but they do not owe a duty to specific individuals injured by crime unless a "special relationship" has been created between the victim and law enforcement.

"Special relationships" have been found by the courts to exist in the following circumstances:

1. Failure to respond for calls of assistance where there is reason to believe persons are in imminent danger.
2. Failure to arrest or restrain persons who are committing, or are about to commit, violent crimes.
3. Where a duty to protect has been assumed, or appears to have been assumed, and the victim relied on it.

Example: Police have a knowledge of threats to victims and police promise protection but fail to protect; officers advise a victim of threats that they will advise a victim when suspect is released from jail but fail to do so; or when suspect violates protective order, and police fail to respond for call of assistance.

4. Failure to protect persons whom the authorities have brought into contact with the assailants of those who have assisted law enforcement officers.
5. Failure to investigate.

Seven Most Common Areas of Officer Liability

- Failure to take proper actions to protect a citizen.
- Failure to appropriately enforce a court order protecting a victim of domestic abuse.
- Failure to respond at all or in a timely manner.
- Failure to provide information to a victim as required by law.
- Arresting a citizen without establishing probable cause.
- Exhibiting a pattern of differential treatment or application of the law to domestic assault cases.
- Failure to train.

LIABILITY CASES

1. ROY vs. CITY OF EVERETT: 118 Wash. 2d 352, 823 P.2d 1084 (1982). The Washington State Supreme Court held that police officers are not immune from liability damages when they fail to enforce the law. The case stated that victims of domestic violence must receive equal protection under the law and that individual officers and the governmental agency that employs them will be held accountable when the failure to enforce the laws result in injuries or the death of the victim.
2. BARTALONE vs. BERRIEN: 643 F. Supp. 574 Mich. (1986). Bartalone won a lawsuit against the municipality because the chief of police failed to institute, promulgate, publish and enforce a policy of intervention in spouse abuse cases. Bartalone was a victim of domestic violence who reported to a police officer that her husband had threatened to kill her. The officer did nothing and Bartalone was later shot by her husband who then killed himself.
3. BALISTRERI vs. PACIFICA POLICE DEPARTMENT: 855 F. 2d 1421 (9th Cir. 1988). Balistreri had an order for protection. She called the police when her husband beat her. Officers made him leave the residence but did not arrest him. Officers were rude and told her "she deserved the beating." Balistreri won the suit based upon due process and equal protection. Based upon the relationship she had with police; namely that she had a protective order and the police had been put on notice of the risk of her.
4. WATSON vs. KANSAS CITY: 42 U.S.C. 1983. Watson proved that a pattern existed in the departments differential treatment of domestic assault cases compared to non-domestic assaults: 16% arrest rate on domestics, 31 % for non-domestic assaults. Department training encouraged officers to defuse domestic assault cases using arrest as a last resort.
5. CITY OF CANTON vs. HARRIS: 119 S. Ct, 1197 (1989). In certain limited circumstances, liability may exist under the Federal Civil Rights Act for failure to train. The limiting circumstances are:
 1. The failure to train must amount to "deliberate indifference" to the constitutional rights of persons who come in contact with the police.
 2. A municipality's "policy" or "custom" must be a moving force behind the violation.