



Law Enforcement Liability

Under the Colorado Governmental Immunity Act (CGIA), public entities and employees are generally immune from liability in all claims except those specifically provided for in state law. In 2020, national and local public demonstrations against excessive use of force by law enforcement prompted the passage of *Senate Bill 20-217* which limits qualified immunity for law enforcement officers. This *issue brief* provides an overview of law enforcement officer actions that are subject to civil or criminal liability.

Background: Types of Liability

There are two types of legal liability: civil and criminal. Civil liability occurs when a private party brings a suit against another party seeking remedy for some harm or injury. Criminal liability occurs when a prosecutor charges a person with the commission of a crime. A single incident, such as a traffic collision, may incur both criminal and civil liability, depending on the circumstances.

Civil Liability for Law Enforcement

Under the CGIA, public employees, including law enforcement, are liable in an injury claim if their act or omission was willful and wanton.¹ In practice, this means that law enforcement officers are generally not responsible for injuries caused in the line of duty, such as when pursuing an individual during the commission of a felony, unless

the officer's actions occur outside of normal job duties or the actions are willful and wanton.

In addition, state law outlines specific immunity exceptions for law enforcement officers, which are outlined below. Agencies employing law enforcement officers are generally required to indemnify, or cover the damages, incurred by employed officers.

Destruction or unlawful seizure of recordings. Persons can bring civil actions against the employing agency of a law enforcement officer if, while the person attempts to record or records an incident involving an officer, an officer unlawfully:

- destroys or damages the recording or recording device;
- seizes the recording or recording device;
- intentionally interferes with the attempt to record the incident; or
- retaliates against a person recording or attempting to record the incident.²

Deprivation of rights. Persons can bring civil actions against law enforcement officers who deprive a person of any individual rights secured by the state constitution, such as the freedom of speech and the right to assemble and petition. Law enforcement officers are liable to injured parties for legal, equitable, or any other appropriate relief.³ Statutory

¹ Section 24-10-118, C.R.S.

² Section 13-21-128, C.R.S.

³ Section 13-21-131, C.R.S.

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immunities and statutory limitations on liability, damages, or attorney fees do not apply to claims brought pursuant to this exception.

The Attorney General has the authority to bring civil actions against law enforcement agencies and personnel to address patterns of conduct that deprive persons of rights guaranteed by federal or state law.

Indemnification by agencies. Political subdivisions and state institutions of higher education employing peace officers must indemnify paid officers and reserve officers for any liability incurred by the officers while on duty, except for punitive damages.⁴ Indemnifications are limited to \$100,000 for one person in any single occurrence, or \$300,000 for two or more persons in any single occurrence. In an occurrence with two or more persons, the maximum indemnification per person is \$100,000. If the employing agency determines that the officer acted in bad faith and knew their actions were unlawful, then the officer is personally liable for up to 5 percent or \$25,000 of any judgement or settlement.⁵ Reserve officers are required to reimburse districts for their legal defense if the court finds that the officer's actions were outside the scope of their assigned duties, or if the officer's actions were willful and wanton.

Criminal Liability for Law Enforcement

Law enforcement officers may also be held criminally liable for committing certain

offenses. This includes not reporting use of force, failing to intervene to prevent the use of unlawful force, and exceeding the degree of physical force permitted in law.⁶

Specifically, a peace officer must not use deadly force to apprehend a person suspected of only a minor offense and must use force consistent to minimize injuries. When force is used, the peace officer must ensure that assistance and medical aid are rendered as soon as practicable, and ensure that relatives are notified as soon as practicable.

In addition, a peace officer is only justified in using deadly force if other means of apprehension are unreasonable and: the arrest is for a felony involving deadly physical force; the suspect poses an immediate threat; and the force employed does not create a substantial risk of injury to other persons. Finally, peace officer use of chokeholds is strictly prohibited.⁷

Additional Penalties for Law Enforcement

Along with civil and criminal penalties for misconduct, law enforcement officers may be subject to disciplinary actions by their employing agencies and the Peace Officer Standards and Training (P.O.S.T.) board. These can include termination of employment and suspension or revocation of peace officer certification. The P.O.S.T. board maintains an *online database*⁸ of misconduct by law enforcement officers.

⁴ Section 29-5-111, C.R.S.

⁵ *Ibid.*

⁶ Section 8, Article 8, Title 18 C.R.S

⁷ 18-1-707 C.R.S.

⁸ <https://post.coag.gov/s/>