

<b>YORK-POQUOSON SHERIFF'S OFFICE</b>	<b>RULES AND REGULATIONS</b>
<b>SUBJECT: Liability Protection</b>	<b>NUMBER: RR 1-15</b>
<b>EFFECTIVE DATE: May 30, 2019</b>	<b>REVIEW DATE: April 22, 2019</b>
<b>AMENDS/SUPERSEDES: RR 1-15, October 1, 2002</b>	<b>APPROVED:</b>  Sheriff
<b>VLEPSC: PER.03.03</b>	

1 **INDEX WORDS**

- 2
- 3 Civil rights violations
- 4 Immunity; from liability
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- 9

10 **POLICY**

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12 The York-Poquoson Sheriff's Office has a liability protection program which protects employees

13 for actions or omissions directly related to their law-enforcement function. Within stated policy

14 limits, this program protects employees from acts or omissions leading to personal injury, death or

15 property destruction, which in turn, could lead to civil action against the employee. Civil litigation

16 can be trying for all employees and the result can be damaging, but litigation may also serve to

17 clarify our roles and responsibilities and aid the Sheriff in improving service to the community.

18 Each employee has an affirmative duty to uphold the law and preserve constitutional guarantees.

19 An employee who witnesses other employees violate a citizen's constitutional rights shall intervene

20 to stop the violation and report it to a supervisor.

21

22 **PURPOSE**

23

24 To set forth procedures relating to the law enforcement liability protection program. This order is

25 intended to help employees respond to high-risk activities that pose a civil liability risk and to

26 outline responsibilities in the event of a lawsuit.

27

28 **PROCEDURES**

- 29
- 30 • Liability Protections
    - 31 ○ The York-Poquoson Sheriff's Office maintains a liability program to protect employees
    - 32 for acts or omissions directly related to their law-enforcement function.
    - 33 ○ Liability protection is provided in a variety of ways, typically including:
      - 34 ▪ Deputies' liability coverage,
      - 35 ▪ Vehicle liability coverage, and
      - 36 ▪ Self-insurance.

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- Since the exact components of the liability protection program are subject to periodic change through contract expiration and renegotiation, any employee desiring to know the specific components then in effect may contact the Administrative Services Manager.
  - General liability is provided through the Virginia Department of the Treasury, Division of Risk Management.
  - Section [2.2-1839](#), Code of Virginia, provides that the department shall:
    - Establish one or more risk management plans which includes the purchase insurance, self-insurance or a combination thereof to provide protection against liability imposed by law for damages and against incidental medical payments resulting from a claim against a county, city, town, constitutional officer and others.
  - Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers.
  - The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan.
- Types of Liability
    - Some duties are mandated by law, others by custom or tradition. Liability may arise in either case.
    - Employees are expected to show discretion and good judgment in their work.
      - Employees are reminded that litigation against them, the Sheriff, or the York-Poquoson Sheriff's Office may focus on the degree to which deputies followed a policy or custom, the latter defined as "a persistent, widespread practice", which, in itself, was either unconstitutional, illegal, or the cause of an unjustifiable injury.
        - ❖ If such a custom or policy is found by the court, the sheriff's office may be held liable.
          - ✓ The Sheriff's Office cannot avoid lawsuits; the Sheriff can control the agency's liability by demanding strict adherence to the provisions of this manual.
    - Deputy Sheriffs may be held liable for misconduct in any of five ways:
      - Violation of Virginia criminal law;
      - Violation of departmental orders;
      - Tort against a citizen;
      - Violation of federal criminal civil rights statutes, [Title 18 United States Code Section 242](#).
      - Violation of federal civil rights law, [42 United States Code § 1983](#).
    - Federal civil rights liability
      - [42 United States Code § 1983](#) reads:
        - ❖ "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen

82 of the United States or other persons within the jurisdiction thereof to the  
83 deprivation of any rights, privileges or immunities secured by the Constitution  
84 and laws, shall be liable to the party injured on an action at law, suit in equity,  
85 or other proper proceeding for redress."

86 ➤ For purposes of federal civil liability per § 1983, a deputy sheriff is a person  
87 acting under color of law.

88 ✓ A deputy may be held personally liable for violating citizens'  
89 constitutional rights under some conditions.  
90

91 ○ State liability generally

- 92 ■ Claims of negligence in the state courts pose liability in a different way than [42](#)  
93 [United States Code § 1983](#) above. While federal claims usually allege a  
94 constitutional rights violation, in state courts it must be shown that the law-  
95 enforcement agency owed a duty to the plaintiff and that a breach of the duty caused  
96 an injury.
- 97 ■ Liability is sometimes found against the law-enforcement agency as "negligent  
98 failure to protect" when the agency created a special relationship with the plaintiff  
99 by promising to act, and then failing to protect the victim.

100  
101 ○ Supervisory liability

- 102 ■ Generally, deputies and not their supervisors are liable for their own misconduct.
- 103 ■ Supervisors are civilly or criminally liable under the following circumstances:
  - 104 ❖ When supervisors directly authorize or participate in acts that cause harm.
  - 105 ❖ When supervisors know that their subordinates are violating citizens'  
106 constitutional rights and condone or approve it, or do not stop it.
  - 107 ❖ Failure to discipline subordinates, correct misbehavior or poor performance, or  
108 to conduct internal investigations when necessary.

109  
110 ○ Immunity

- 111 ■ In court, deputies do not automatically receive immunity from lawsuits simply  
112 because they acted in good faith.
  - 113 ❖ Deputies may claim qualified immunity when:
    - 114 ➤ Their actions do not violate clearly established statutory or constitutional  
115 rights of which a reasonable deputy would have known, or
    - 116 ➤ The actions or omissions by the deputy does not constitute gross negligence.
      - 117 ✓ In short, deputies must have an objectively reasonable belief in the  
118 constitutionality of their actions.
  - 119 ❖ Immunity is not a quality that deputies can claim during an investigation.  
120 Rather, it is a defense to an accused deputy that must be raised in court and  
121 considered by a judge.  
122

123  
124 ● Employees Covered

- 125 ○ The Sheriff, all deputies, and both full and part-time civilian Sheriff's Office employees  
126 are covered by the liability protection program.

- 127           ▪ For purposes of this order, "employees" refers both to sworn and non-sworn  
128           personnel.  
129           ▪ Actions of either one can lead to liability.  
130           ❖ In some portions of this order, "deputy" is used instead of "employee" where the  
131           issue under discussion pertains most directly to enforcement duties.  
132  
133       • Notification of Suit or Claims  
134           ○ Any employee who receives notice in any form, or a subpoena to testify in an actual or  
135           impending legal suit or claim against the County of York, Sheriff, Sheriff's Office or  
136           any employee of the Sheriff's Office arising out of an official action shall, as soon as  
137           possible, notify the Sheriff through their chain of command.  
138           ○ The Sheriff shall, in turn, provide appropriate notification to both the county  
139           administrator and the county attorney.  
140  
141       • Financial Liability  
142           ○ No employee shall imply or accept financial liability for loss or damage on behalf of the  
143           county.  
144           ▪ Any inquiries concerning financial liability will be referred to the county attorney.  
145  
146       • Acts Not Covered  
147           ○ An act committed by an employee or an omission of duty, which constitutes gross and  
148           willful negligence may not be covered by the Sheriff's Office liability policy.  
149  
150       • Other Liability Protections  
151           ○ In addition to the liability coverage above, the Sheriff's Office and/or the County of  
152           York provides the following types of protection.  
153           ▪ Automobile liability insurance.  
154           ▪ Workers compensation for county employees.  
155           ▪ Workers compensation for auxiliary deputies.  
156           ❖ Workers compensation protection is provided for auxiliary deputies by a  
157           separate private insurer.  
158

## 159       PROCEDURES

- 160  
161       • High-risk Incidents  
162           ○ High-risk incidents pose the greatest possibility of generating the most litigation and  
163           include:  
164           ▪ Use of force,  
165           ▪ Vehicular pursuits and emergency driving,  
166           ▪ Tactical entries,  
167           ▪ Searches and seizures, and  
168           ▪ Arrests.  
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170           ○ The following are also high liability issues, even though they do not involve what is  
171           normally considered to be high risk activities:

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- Failure to render or improperly rendering medical assistance.
  - Failure to enforce the law.
  - Response to High-Risk Incidents
    - Supervisors and deputies shall observe the following procedures concerning all high-risk incidents:
      - Frequently review policies covering high-risk incidents.
      - Seek guidance from immediate supervisors concerning all unclear aspects of high-risk policies.
      - Supervisors shall focus their attention to the extent possible while subordinates are performing high-risk operations.
      - Supervisors shall respond to the scene of high-risk operations when appropriate and direct actions as necessary on the scene or by radio.
    - Deputies and supervisors shall:
      - Ensure that timely medical attention is provided to any injured persons at the scene, and
      - Shall document the condition of the suspect to include:
        - ❖ What kind of medical help was required, and
        - ❖ The apparent health of the suspect before the incident.
      - Deputies and supervisors shall assess the suspect's apparent mental health, document it as well as any signs of overt, aggressive, or even suicidal behavior.
      - Secure the scene and all evidence, when applicable.
      - Obtain names, addresses of all witnesses at the scene, and obtain statements, if possible.
      - Supervisory responsibilities during vehicle pursuits shall follow those outlined in [GO 2-9, Vehicle Operations](#).
      - When appropriate, supervisors may independently evaluate arrests and document probable cause.
      - Supervisors shall ensure that adequate photographs and/or video is taken of the scene.
      - Photographs shall be taken of suspect injuries and injuries reported documented in the incident report.
      - Supervisors shall coordinate and collect reports from all participating deputies to a high-risk incident, including reports from personnel of other participating agencies.