JOPLIN POLICE DEPARTMENT	2-12 STANDARD OPERATING GUIDELINE
SUBJECT: Liability Protection	**REVIEW DATE: Annually - February**
EFFECTIVE DATE: February 1st, 2007	**ACTION DATE:**
AMENDS/SUPERSEDES: 1-19, April 18, 2003	**AMEND DATE: August 22, 2022**
ACCREDITATION INDEX:	**APPROVED:** Richard A. Pearson **Chief of Police**

I. POLICY

The department has a liability protection program that protects employees for actions or omissions directly related to their law-enforcement function. Within stated policy limits, this program protects employees from acts or omissions leading to personal injury or death or property destruction, which in turn, could lead to civil action against the employee. Civil litigation can be trying for all employees and the result can be damaging, but litigation may also serve to clarify our roles and responsibilities and aid the department in improving service to the community.

Each employee has an affirmative duty to uphold the law and preserve constitutional guarantees. An employee who witnesses other employees or public safety associate violate a citizen's constitutional rights shall intervene to stop the violation and report it to a supervisor.

II. PURPOSE

To set forth procedures relating to police liability protection. This order is intended to help employees respond to high-risk activities that pose a civil liability risk and to outline responsibilities in the event of a lawsuit.

III. PROCEDURES - General

A. Notification of suit or claims

Any employee who receives notice in any form of actual or impending legal suit or claim shall, as rapidly as possible, explain the circumstances through command channels to the chief of police. The chief shall, in turn, provide appropriate notification to both the city manager and the city attorney.

B. Financial liability

No employee shall imply or accept financial liability for loss or damage on behalf of the city. Any inquiries concerning financial liability will be referred to the city attorney.

C. Acts not covered

1. An act committed by an employee or an omission of duty, which constitutes gross and willful negligence, **may not** be covered by the City.

2. Employees are expected to show discretion and good judgment in their work. Some duties are mandated by law, others by custom or tradition. Liability may arise in either case. The department cannot avoid lawsuits; the department can control its liability by demanding strict adherence to the provisions of this manual.

3. Employees are reminded that litigation against them or the department may focus on the degree to which officers 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 the court finds such a custom or policy, the department may be held liable.

IV. PROCEDURES - Liability principles

A. Types of liability

Officers may be held liable for misconduct in any of five ways:

1. Violation of Missouri criminal law;

2. Violation of departmental orders;

3. Tort against a citizen;

4. Violation of federal criminal civil rights statutes, 18 *United States Code* §§ 241 and 242.

5. Violation of federal civil rights law, 42 *United States Code* § 1983.

B. Federal civil rights liability

1. § 1983 is the most important statute governing federal civil rights liability. For purposes of federal civil liability per § 1983, an officer is a person acting under color of law. An officer may be held personally liable for violating citizens' constitutional rights under some conditions.

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

C. State liability generally

Claims of negligence in the state courts pose liability in a different way than § 1983 above. While federal claims usually allege a constitutional rights violation, in state courts it must be shown that the law-enforcement agency owed a duty to the plaintiff and that a breach of the duty caused an injury. Liability is sometimes found against the law-enforcement agency as "negligent failure to protect" when the agency created a special relationship with the plaintiff by promising to act, and then failing to protect the victim.

D. Supervisory liability

Generally, officers and not their supervisors are liable for their own misconduct. Supervisors are civilly or criminally liable under the following circumstances:

1. When supervisors directly authorize or participate in acts that cause harm.

2. When supervisors know that their subordinates are violating citizens' constitutional rights and condone or approve it, or do not stop it.

3. Failure to discipline subordinates, correct misbehavior or poor performance, or to conduct internal investigations when necessary.

E. Immunity

In court, officers do not automatically receive immunity from lawsuits simply because they acted in good faith. Officers may claim qualified immunity when their actions do not violate clearly established statutory or constitutional rights of which a reasonable officer would have known. In short, officers *must* have an objectively reasonable belief in the constitutionality of their actions. Immunity is not a quality that officers can claim during an investigation. Rather, it is a defense to an accused officer that must be raised in court and considered by a judge.

V. PROCEDURES - High-risk incidents

A. High-risk incidents defined

High-risk incidents pose the greatest possibility of generating the most litigation and include use of force, vehicular pursuit and emergency driving, searches and seizures, arrests, failure to render (or improperly rendering) medical assistance, and failure to enforce the law.

B. Response to high-risk incidents

Supervisors and officers shall observe the following procedures at all high-risk incidents:

1. Secure the scene and all evidence.

2. Supervisors shall ensure that timely medical attention is provided to any injured persons at the scene, and that documentation is made concerning the condition of the suspect, what kind of medical help was required, and the apparent health of the suspect before the incident. Similarly, they shall ensure that officers assess the suspect's apparent mental health; document it as well as any signs of overt, aggressive, or even suicidal behavior.

3. Obtain names, addresses of all witnesses at the scene, and obtain statements, if possible.

4. A supervisor shall respond to the scene and direct actions as necessary.

5. If a pursuit has occurred, the supervisor shall ensure that the officer documents the weather conditions, lighting and visibility, route of the chase, duration of the chase, number of participating vehicles and the names of the officers, and any other relevant information.

6. If an arrest is made, the supervisor may, before booking, independently evaluate the arrest and document its probable cause.

7. Supervisors shall ensure that adequate photographs or videotape shall be taken of the scene.

8. Supervisors shall coordinate and review reports from all participating officers to a high-risk incident, including reports from personnel of other participating agencies.

VI. PROCEDURES - Responsibilities of employees

A. Any employee in receipt of a subpoena to testify concerning official business shall notify their supervisor prior to court.

B. Any employee named as a party in a civil action for acts or omissions of duty shall immediately notify the chief through the chain of command.

VII. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies, shall comply with this policy.

VIII. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.