



## LAW ENFORCEMENT LIABILITY

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ICRMP  
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## POLICE LIABILITY

### State Tort Law

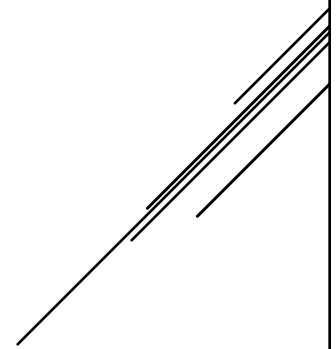
- Tort occurs when a person's behavior has unfairly caused someone to suffer loss or harm by reason of a personal injury
- Generally based on the premise that you owe a duty of due care to the person who is claiming damages against you
- Due care is an objective standard of how a reasonable man would conduct himself

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Idaho Code § 6-903

- The County and its employees are only liable for the pro rata share of the total damages caused by the negligent or otherwise wrongful acts or omissions of the governmental entity or acts of its employees acting within the course and scope of their employment.

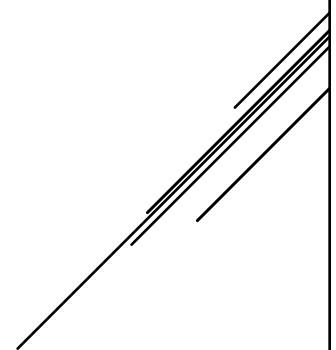


## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Idaho Code § 6-903

- County is required to defend and pay damages for the employees when they are individually sued and alleged wrongful acts were committed in course and scope of employment unless the act was done with malice or criminal intent.
- Rebuttable presumption that the employee's acts were within the course and scope and without malice or criminal intent

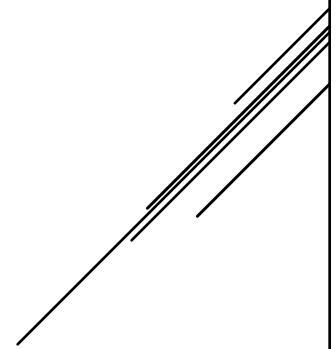


STATE LAW V.  
FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Course and Scope of Employment

Acts "which are so closely connected with what the servant is employed to do, and so fairly and reasonably incidental to it, that they may be regarded as methods, even though quite improper ones, of carrying out the objectives of the employment"

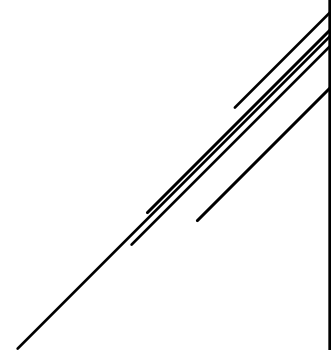


STATE LAW V.  
FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Criminal Intent

The intentional commission of a wrongful act without legal justification or excuse, whether or not injury was intended



## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Malice

- “The intentional commission of a wrongful or unlawful act, without legal justification or excuse and with ill will, whether or not injury was intended”
- Notice that malice has same definition as criminal intent but also requires “ill will”

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Intentional Tort Exception

§ 6-904—A governmental entity and its employees while acting within the course and scope of their employment **and without malice or criminal intent** shall not be liable for any claim which. . .

Arises out of assault, battery, false imprisonment, false arrest . . .

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Person in Custody Exception

§ 6-904A—A governmental entity and its employees while acting within the course and scope of their employment and **without malice or criminal intent and without reckless, willful and wanton conduct** . . . shall not be liable for any claim which:

Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity . . .

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

Idaho Tort Claims Act

Person in Custody Exception

- Reckless, willful and wanton" defined as the "**intentional and knowing** act or failure to act that creates **unreasonable risk of harm** to another, and which involves a **high degree of probability** that such harm will result."
- Involves an element of foreseeability of the specific harm that occurred based on the acts or omissions of the employee

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

42 U.S.C. § 1983 federal court Litigation

- Provides procedural rights to be in federal court
- Does not provide any substantive basis for the lawsuit
- Substantive right must be violation of constitutional rights or other federal law

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

42 U.S.C. § 1983

Every person who, under of color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects . . . any citizen of the United States or other persons . . . to the **deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

STATE LAW V.  
FEDERAL/CONSTITUTIONAL CLAIMS

42 U.S.C. §1983

Law enforcement typical constitutional provisions:

4<sup>th</sup> Amendment:

“The right of the people to be secure in their persons [and] houses . . . against **unreasonable searches and seizures**, shall not be violated, and no warrants shall issue, but upon probable cause  
... “

STATE LAW V.  
FEDERAL/CONSTITUTIONAL CLAIMS

42 U.S.C. §1983

Law enforcement typical constitutional provisions:

8<sup>th</sup> Amendment:

“Excessive bail shall not be required, nor excessive fines imposed, nor **cruel and unusual punishment** inflicted.”

## STATE LAW V. FEDERAL/CONSTITUTIONAL CLAIMS

42 U.S.C. §1983

Law enforcement typical constitutional provisions:

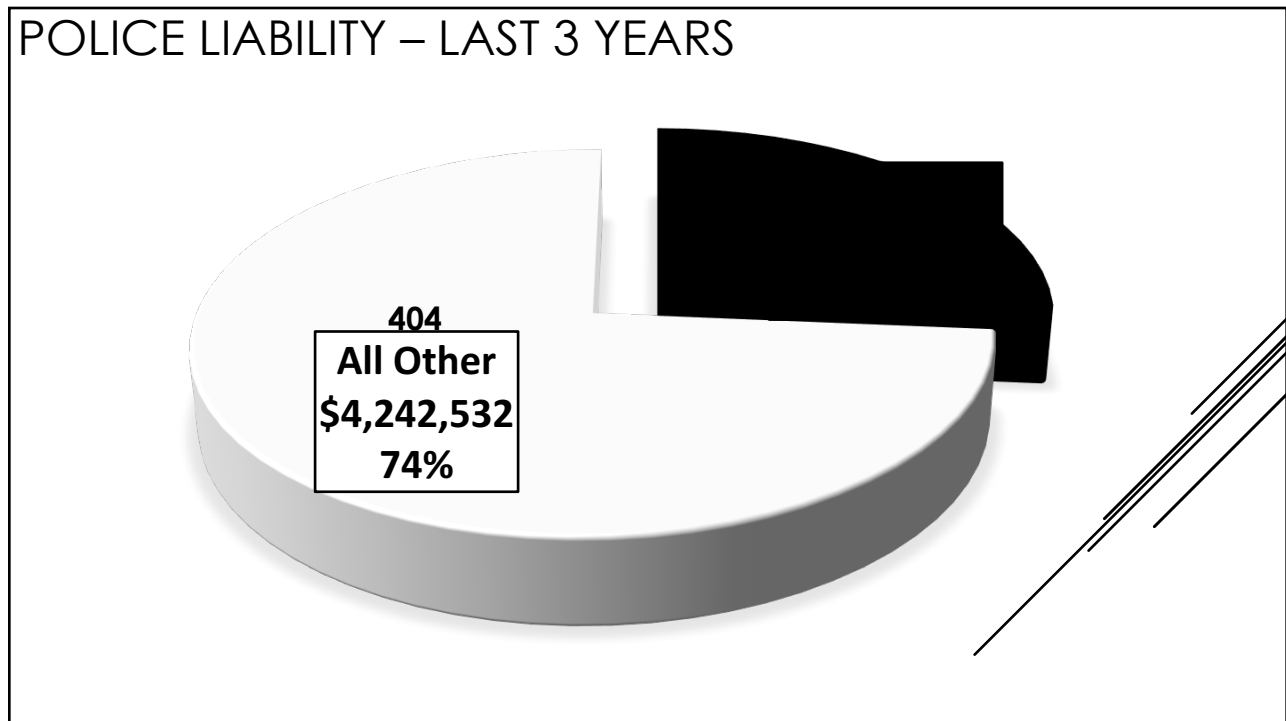
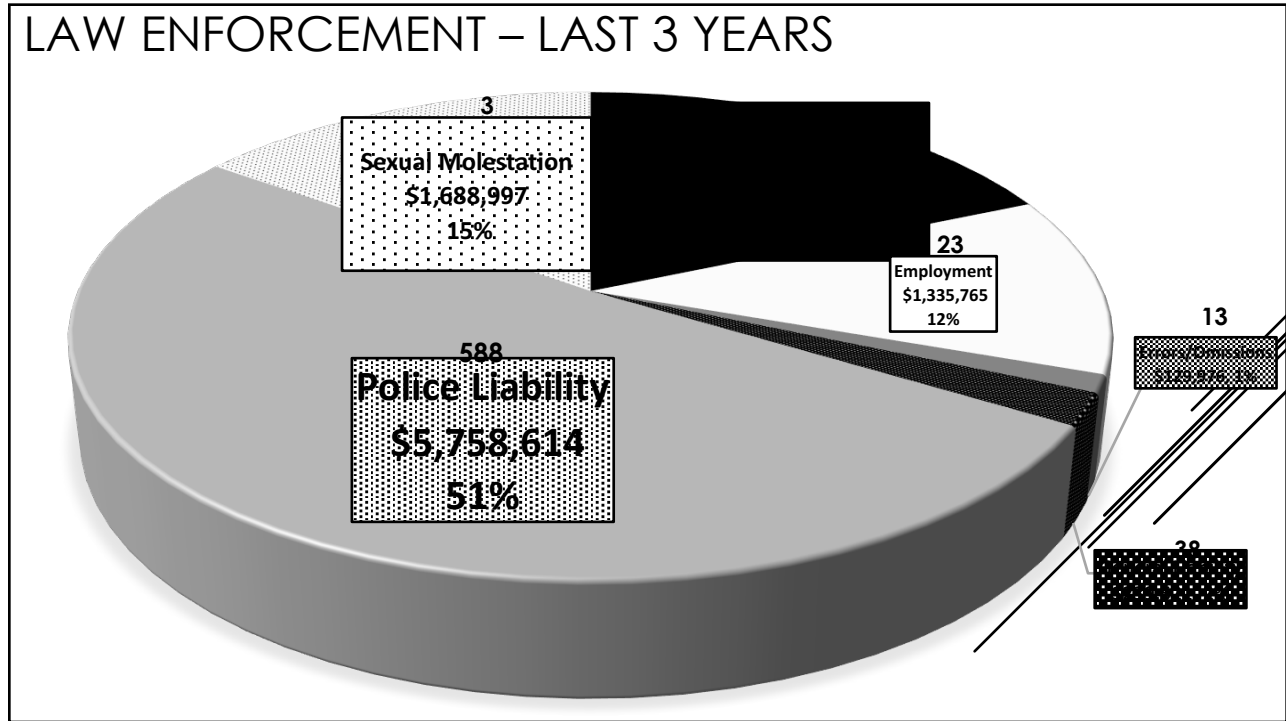
14<sup>th</sup> Amendment:

“... No state shall . . . **deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.”

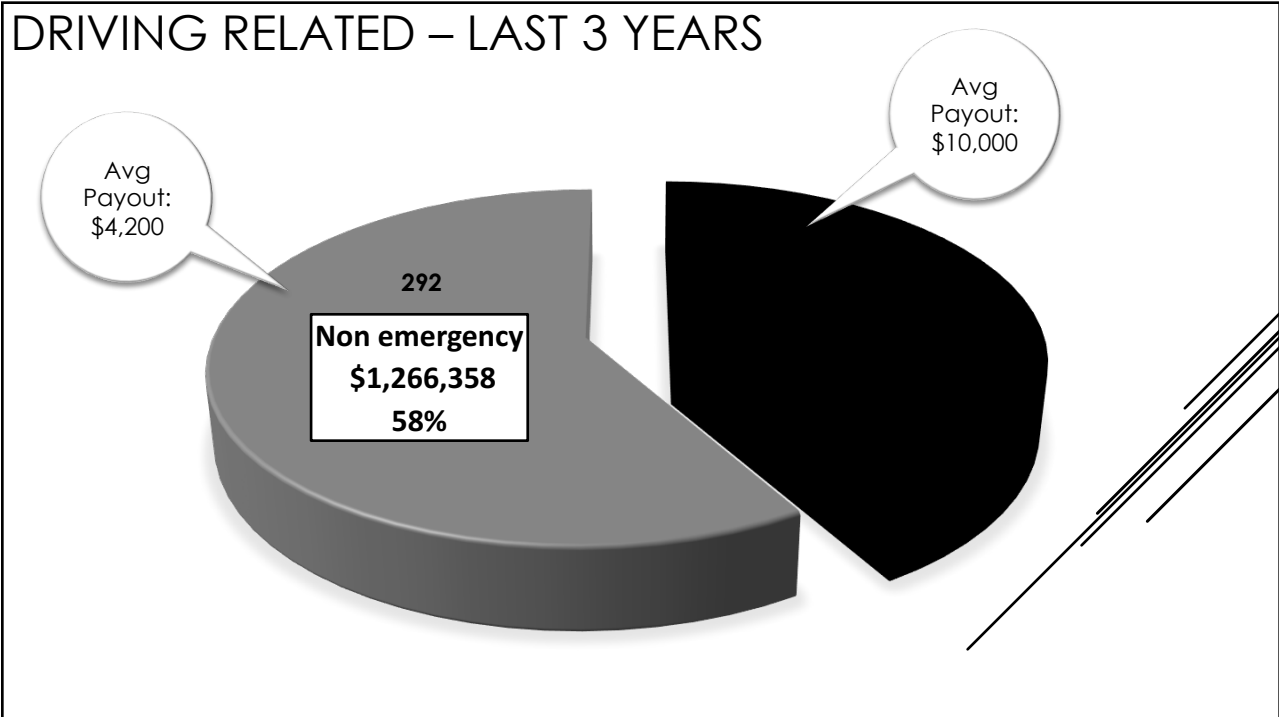
## CLAIMS CATEGORIES

- ▶ General Liability
- ▶ Errors and Omissions
- ▶ Employment
- ▶ Police Liability
- ▶ Sexual Molestation
- ▶ Auto/Driving





## DRIVING RELATED – LAST 3 YEARS



## 2016 POLICE LIABILITY CLAIMS

139 total non-vehicle related police liability claims received by ICRMP since 1/1/16, including

- 37 Jail (including failure to detain/suicide and failure to provide medical care)
- 15 Use of Force
- 10 Damaged or lost cell phones incident to arrest
- 3 Use of Force/Shooting (including 2 deaths)
- 16 Illegal Arrest
- 10 Employment

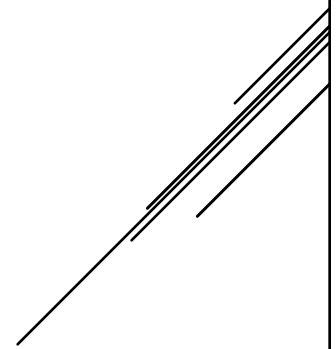
## 2016 POLICE LIABILITY CLAIMS

38 auto-related police liability claims received by ICRMP since 1/1/16, including

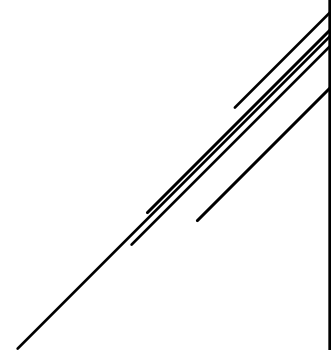
- 10 Emergency response
- 28 Non-emergency response

105 1<sup>st</sup> party auto damage claims received by ICRMP since 1/1/16, including

- 25 Collisions with animals in the road
- 27 Emergency response



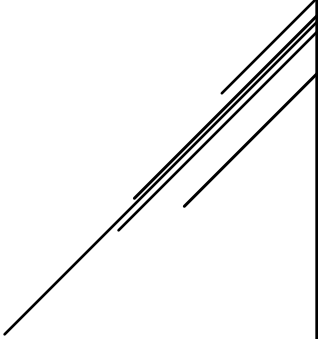
## DRIVING LIABILITY AND CLAIMS



## HIGH SPEED PURSUIT

### Idaho Code § 49-623

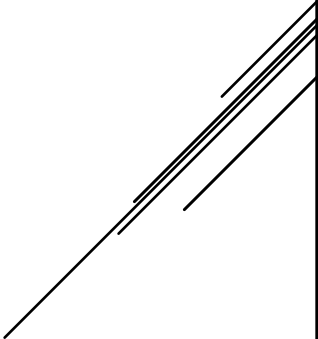
(1) The driver of an authorized emergency or police vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated.



## HIGH SPEED PURSUIT

### Idaho Code § 49-623

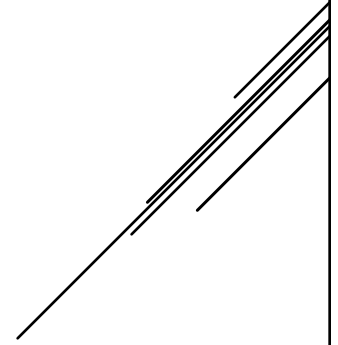
(2) The driver of an authorized emergency or police vehicle may:

- (a) Park or stand, irrespective of the parking or standing provisions of this title;
  - (b) **Proceed past a red or stop signal or stop sign**, but only after slowing down as may be necessary for safe operation;
  - (c) **Exceed the maximum speed limits** so long as he does not endanger life or property;
  - (d) **Disregard** regulations governing **direction of movement or turning** in specified directions.
- 

## HIGH SPEED PURSUIT

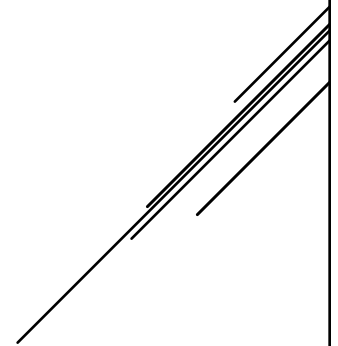
### Idaho Code § 49-623

(4) The foregoing provisions shall not relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons, **nor shall these provisions protect the driver from the consequences of his reckless disregard for the safety of others.**



## HIGH SPEED PURSUIT

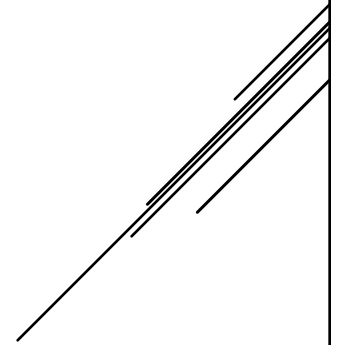
Athay v. Bear Lake County  
Idaho Supreme Court, 2005



## HIGH SPEED PURSUIT

Athay v. Bear Lake County  
Idaho Supreme Court, 2005

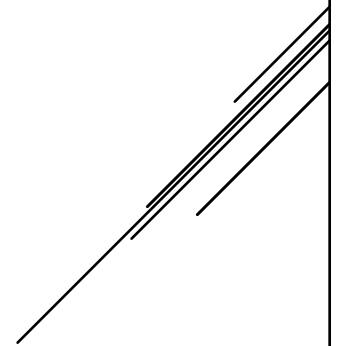
“Due regard” does not refer to simple negligence, but rather equates to “reckless disregard”

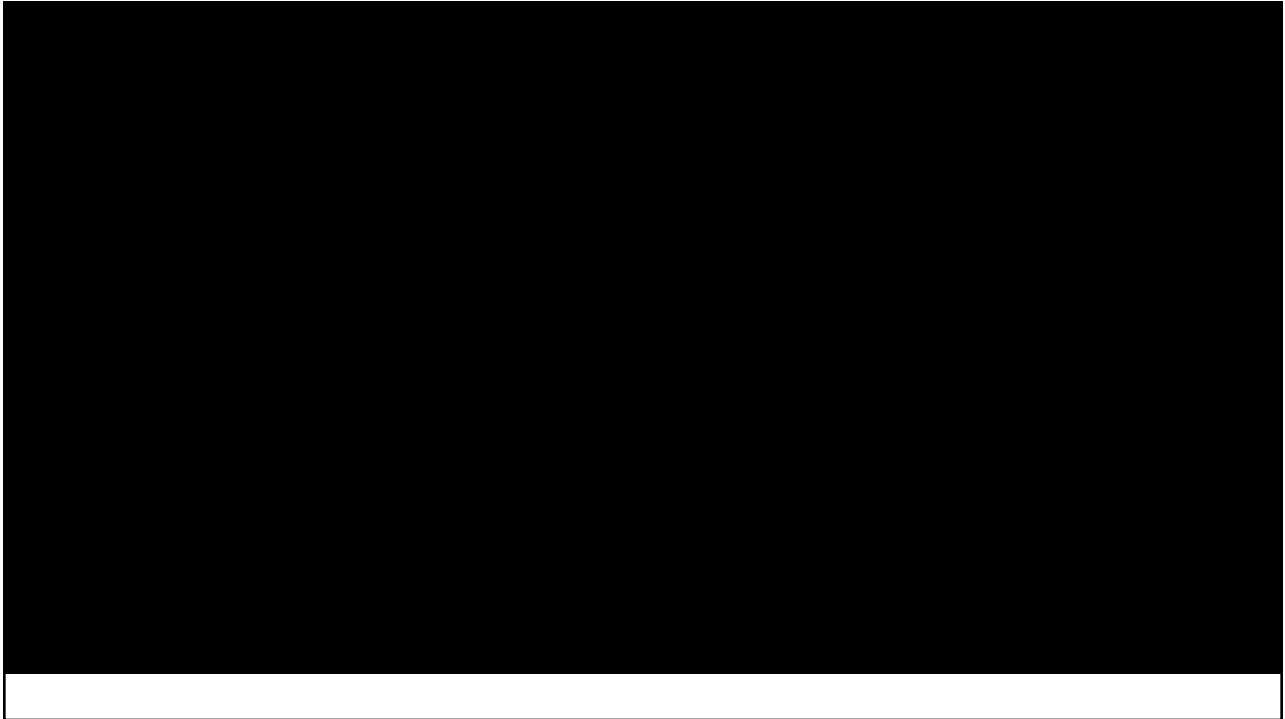


## HIGH SPEED PURSUIT

Athay v. Bear Lake County  
Idaho Supreme Court, 2005

“Reckless disregard of the rights of others’ . . . is the type of conduct engaged in by the driver when he actually perceives the danger and continues his course of conduct.”



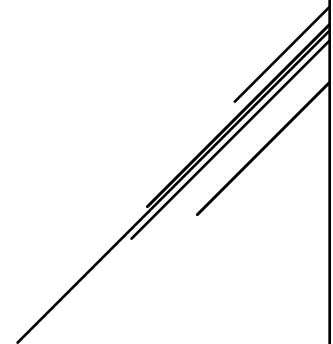


## HIGH SPEED PURSUIT

### Federal Constitutional Liability

***County of Sacramento v. Lewis***, 523 U.S. 833  
(1998)

- Analyzed under 14<sup>th</sup> Amendment Substantive Due Process Clause
- No violation unless officer's conduct shows deliberate indifference to the safety of others
- Deliberate indifference met by actions that "shock the conscience," *i.e.* the officer had intent to harm



### LOW SPEED ISSUES



### LOW SPEED ISSUES





## POLICE LIABILITY

Exercise of law enforcement powers  
and control/management of inmates  
in jail



## POLICE LIABILITY

2 Important Issues

- Use of Force/Officer Involved Shootings
  - Jail Suicide
- 

## POLICE LIABILITY

Unreasonable Use of Force



## UNREASONABLE USE OF FORCE


Graham v. Connor, 490 U.S. 386 (1989)

- Analyzed under Fourth Amendment prohibition of unreasonable seizures of their person
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## UNREASONABLE USE OF FORCE

Graham v. Connor, 490 U.S. 386 (1989)

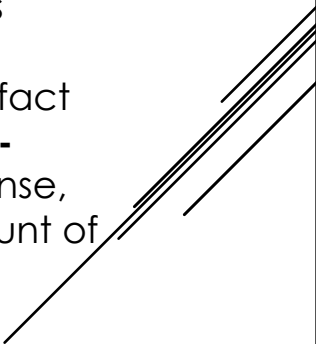
“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”



## UNREASONABLE USE OF FORCE

Graham v. Connor, 490 U.S. 386 (1989)

“**Not every push or shove**, even if it may **later seem unnecessary** in the peace of a judge's chambers violates the Fourth Amendment. The calculus of reasonableness must **embody allowance** for the fact that police officers are **often forced to make split-second judgments**—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”



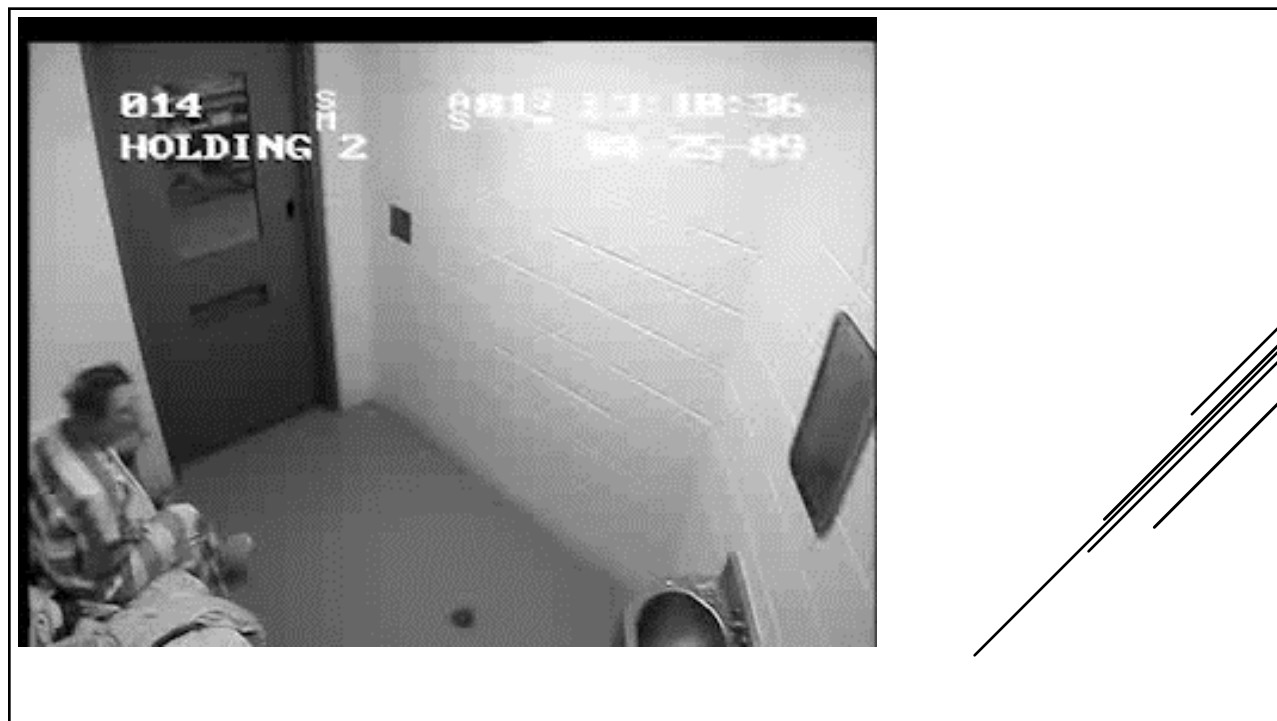
## UNREASONABLE USE OF FORCE

Graham v. Connor, 490 U.S. 386 (1989)

“As in other Fourth Amendment contexts, . . . the question is whether the officers' actions are **“objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.** . . . An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

## POLICE LIABILITY

Jail Suicide



## POLICE LIABILITY

### Jail Suicide

### State Tort Law

§ 6-904A—A governmental entity and its employees while acting within the course and scope of their employment and **without malice or criminal intent and without reckless, willful and wanton conduct** . . . shall not be liable for any claim which:

Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity . . .

## POLICE LIABILITY

Jail Suicide

Federal 8<sup>th</sup> Amendment Claim

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”

## POLICE LIABILITY

USSC has held that 8th Amendment only applies to post-conviction inmates

- Jails have both pre-conviction and post-conviction inmates
- Pre-conviction inmates are not being punished for their crimes
- Being held in custody to protect society and to ensure their attendance at court hearings

## POLICE LIABILITY

USSC has held:

- Pre-conviction inmates are protected by due process clause of the 14th Amendment
- Imposes same standards as the cruel and unusual punishment clause of the 8th Amendment

## POLICE LIABILITY

Jail Suicide

8th/14th Amendment Standards

**Farmer v. Brennan**, 511 U.S. 825, 114 S.Ct. 1970 (1994)

“The Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it outlaws cruel and unusual ‘punishments’”

The deprivation, i.e. punishment, must be objectively “sufficiently serious”

## POLICE LIABILITY

Jail Suicide

8th/14th Amendment Standards

**Farmer v. Brennan**, 511 U.S. 825, 114 S.Ct. 1970 (1994)

For failure to prevent harm claim, the inmate must show that his conditions of confinement posed a substantial risk of serious harm

## POLICE LIABILITY

Jail Suicide

8th/14th Amendment Standards

**Farmer v. Brennan**, 511 U.S. 825, 114 S.Ct. 1970 (1994)

Defendants must have a "sufficiently culpable state of mind" that is "deliberate indifference"

"Deliberate indifference" is more than due care (i.e. negligence) but less than actions or omissions for the purpose of causing harm or with knowledge that harm will result



## POLICE LIABILITY

Jail Suicide

8th/14th Amendment Standards

Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970 (1994)

- Deliberate indifference occurs when the person knows of and disregards an excessive risk to inmate health and safety
- "The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference"

## POLICE LIABILITY

Jail Suicide

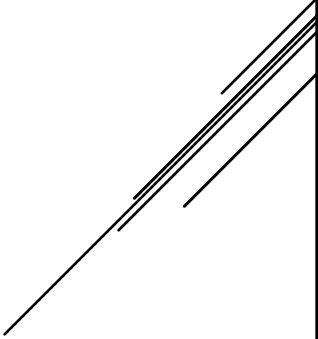
**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

- 17 year old boy arrested for molesting a 10 year old girl
- In adult jail for 6 weeks, but isolated because did not have a juvenile facility

## POLICE LIABILITY

### Jail Suicide

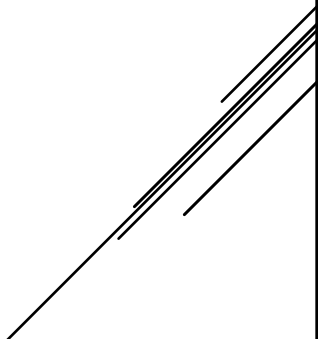
**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

- A week after arrest, informed jail that he had tried to commit suicide and he had superficial cuts on his wrist
  - Placed on suicide watch and received counseling for the attempt
  - After several weeks, mood and demeanor improved and risk was downgraded although still on a lower level suicide watch
  - 3 ½ weeks later committed suicide
- 

## POLICE LIABILITY

**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

Liability of Nurse for Downgrading Level of Watch

- Nurse was **aware of previous suicide attempt**, suffered from depression, and was at some risk of making another attempt
  - Evidence **did not support inference** that the nurse knew he was at **acute risk of harm at the time he killed himself**
  - He seemed like an **average teenager** to nurse as far as his behavior
  - Nurse had no reason to believe from treatment notes of social worker and psychiatric nurse practitioner, that he was **on the brink of killing himself**
  - Nothing alerted nurse to his **impending suicidal crisis**
- 

## POLICE LIABILITY

**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

Liability of Nurse for Downgrading Level of Watch

"A showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation under the Eighth Amendment. Although in hindsight, Nurse Jones may not have made the best or even the proper medical decisions, what is important for the analysis in this case is that her decisions do not evidence deliberate indifference."

## POLICE LIABILITY

**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

Liability of Jail Sergeant for Inadequate and Untimely Cell Checks

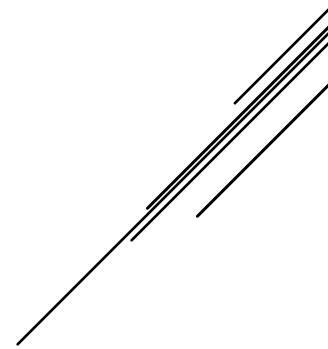
- Did not know about previous suicide attempt
- Never noticed a wrist injury or gauze dressings from previous attempt
- Did not know was suffering from depression and taking antidepressants
- Never heard him make a suicidal threat or gesture
- During his interactions with decedent on day of suicide, saw nothing that would send up a red flag
- All he knew was that decedent was on level of suicide watch designed for emotionally unstable, rather than imminently suicidal, detainees

# POLICE LIABILITY

**Simmons v. Navajo County**, 609 F.3d 1011 (9th Cir. 2010)

Liability of Jail Sergeant for Inadequate and Untimely Cell Checks

“While Jasper's suicide watch status may have alerted Sergeant Warren to the possibility of suicide, we **cannot say that the magnitude of the risk was so obvious that he must have been subjectively aware of it.**”



## LAW ENFORCEMENT 2013-2016

Carl Ericson,  
Risk Management Legal Counsel

