

POLICE LIABILITY

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CITY OF EUGENE

Outline

- How and Why do Claims Arise?

- State Law Claims

- Federal Claims

- Damages

- Defenses

- Significant Topics

 - ▣ Tasers

 - ▣ Mental Health/ADA

 - ▣ Search and Seizure

 - ▣ Homelessness/Occupy

- Investigations

How and Why do Claims Arise?

- Stops
- Arrests
- Pursuits
- Investigations
- Warrant Service
- Barricaded/Suicidal Subjects
- Crowd Control



PROTECT. SERVE. CARE

State Law Claims

- Oregon Tort Claims Act
 - ▣ ORS 30.260-30.300
 - ▣ General waiver of immunity with reservations
 - Discretionary immunity
 - ▣ Damage Caps
 - *But see Clarke v. OHSU*, 343 Or. 581(2007)
 - ▣ Sole Cause of Action. ORS 30.265(1) and (2)
 - ▣ Indemnity and defense

State Law Claims

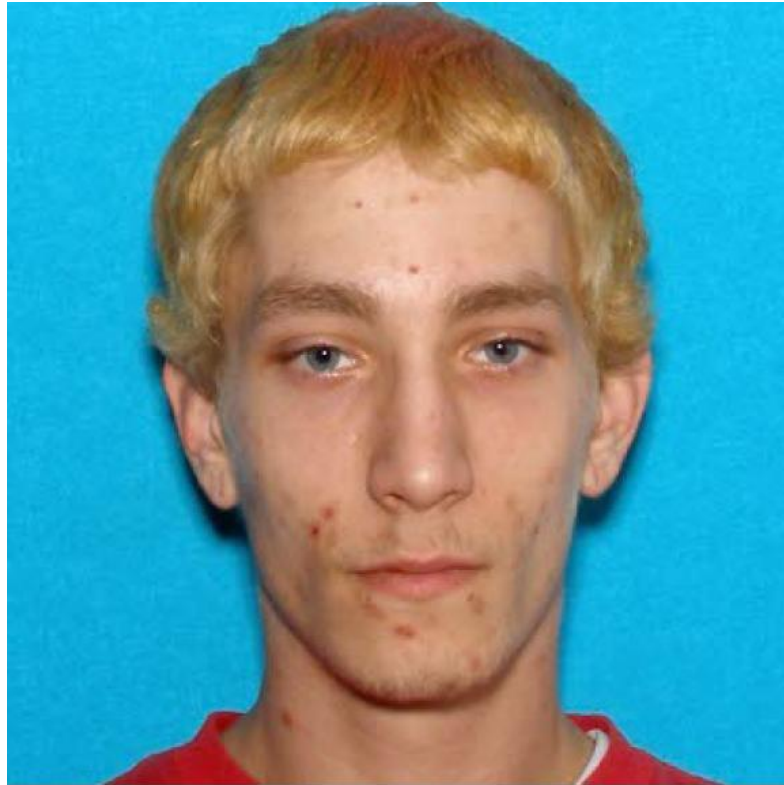
- ❑ Battery/Assault
- ❑ False Arrest/False Imprisonment
- ❑ Conversion
- ❑ Trespass
- ❑ Intentional Infliction of Emotional Distress
- ❑ Negligence

State Law Claims

- ORS 20.080
- Allows for a plaintiff to recover attorney fees in a tort action if they plead damages of \$10,000 or less, follow certain pre-litigation notice procedures, and ultimately recover more than was tendered prior to commencing their action.
- Can't be cut off by a later offer of judgment.
 - ▣ *Powers v. Quigley*, 345 Or. 432, 198 P.3d 919 (2008)

State Law Claims

- *Munson v. City of Eugene* (2014)





State Law Claims

- ❑ Excessive Force
 - ❑ Unreasonable Seizure
 - ❑ False Arrest/False Imprisonment
 - ❑ Battery/Assault
 - ❑ Negligence
-
- ❑ Attorney fee exposure on every claim

State Law Claims

NOW, THEREFORE, IT IS HEREBY ADJUDGED, as follows:

1. That ORS 30.265(2) bars plaintiff from asserting state law tort claims pursuant to ORS 20.080 against defendant City of Eugene, a local public body; and
2. Defendant City of Eugene shall have judgment on its First Counterclaim in its favor and against plaintiff, costs and disbursements to be included in a later judgment.

DATED March 12, 2014

/s/ Charles D. Carlson

Hon. Charles D. Carlson
Circuit Court Judge

State Law Claims

- Oregon Constitution
 - ▣ Article I, Sections 2-6 (Religious freedom)
 - ▣ Article I, Section 8 (Assembly, Speech)
 - ▣ Article I, Section 9 (Search and Seizure)
 - ▣ Article I, Section 27 (Bear arms)
- No claims for money damages under the Oregon Constitution.
 - ▣ *Hunter v. City of Eugene*, 309 Or. 298 (1990)

Federal Claims

- No Direct Constitutional Claim
- 42 USC § 1983
- 42 USC § 1981
- 42 USC § 1988

Federal Claims

□ **Common §1983 Claims**

- First Amendment – Free Speech
- Second Amendment – Right to Bear Arms
- Fourth Amendment – Use of Force/Search/Seizure
- Eighth Amendment – Cruel and Unusual Punishment
- Fourteenth Amendment – Equal Protection/Due Process

Federal Claims

- Use of Force – *Graham v. Connor*
 - ▣ Severity of the crime at issue
 - ▣ Whether the suspect poses an immediate threat of the safety of the officers or others
 - ▣ Whether the subject is actively resisting arrest
 - ▣ Whether the subject is attempting to flee

Federal Claims

- Use of Force – Additional Ninth Circuit Considerations
 - ▣ Degree and quantum of force
 - ▣ Availability of alternatives
 - ▣ Warnings given
 - ▣ Emotional Disturbance or Mental Illness

Federal Claims

- **Deadly Force** - Whether the force employed “creates a substantial risk of causing death or serious bodily injury.” *Smith v. City of Hemet*, 394 F.3d 689, 706 (9th Cir. 2005)
 - Strikes to the head with batons
 - Tasers on subjects at a height
 - Dogs
 - Carotid holds

Federal Claims

- ***Monell*** theories of liability
 - ▣ Custom or Policy
 - ▣ Acts of a Final Policy-Maker
 - ▣ Failure to Train, Supervise or Discipline
 - ▣ Ratification

Federal Claims

Americans with Disabilities Act

The Americans with Disabilities Act entitles people with disabilities to the same services and protections that police departments provide to anyone else. They may not be excluded or segregated from services, denied services, or otherwise provided with lesser services or protection than are provided to others.

Federal Claims



Americans with Disabilities Act applies to arrests

- ▣ *Sheehan v. San Francisco*, 743 F. 3d 1211 (9th Cir. 2014)
- ▣ *Schreiner v. Gresham*, 681 F. Supp.2d 1270 (D. Or. 2010)
- ▣ *Walden v. City of Eugene* (D. Or. 2014)

Damages

□ Federal

- No cap
- Punitive damages allowed
- Attorney fees allowed

□ State

- Tort Claim Cap (sort of)
- No punitive damages
- No attorney fees on most claims

Defenses

- Qualified Immunity
 - ▣ Constitutional Violation?
 - ▣ Clearly Established?
 - ▣ *Pearson v. Callahan*
- *Heck v. Humphrey*, 512 U.S. 477 (1994)
 - ▣ Bar on collateral litigation
- Statutes of Limitations
- Justification - ORS 161.195-161.275
- Litigation Holds

Defenses

- ORS 30.265(6)(f)
 - Public bodies are immune from liability for “Any claim arising out of an act done or omitted under apparent authority of a law, resolution, rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.”
 - State law qualified immunity?

Significant Topics

□ Tasers

- *Bryan v. MacPherson*, 630 F. 3d 805 (9th Cir. 2010)
- *Snauer v. Springfield*, 2010 WL 4875784 (D. Or. 2010)
- *Mattos v. Agarano/Brooks v. Seattle*, 661 F.3d 433 (9th Cir. 2011)



Significant Topics

□ **Mental Health/ADA**

▣ Definition of “mentally ill person”:

- Dangerous to self or
- Dangerous to others and
- The dangerousness results from mental illness

ORS 426.005(1)(e)

▣ Police officer may take into custody a person on probable cause to believe that these criteria are met.

ORS 426.228(1)

Significant Topics

Deorle v. Rutherford, 272 F. 3d 1272 (9th Cir. 2001)

“The problems posed by, and thus the tactics to be employed against, an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal who has recently committed a serious offense.”

Significant Topics

Glenn v. Washington County, 673 F3d 864 (9th Cir. 2011)

Lukus was obviously “emotionally disturbed, a factor to which the officers should have assigned greater weight.” “Even when an emotionally disturbed individual is ‘acting out’ and inviting officers to use deadly force, the governmental interest in using such force is diminished by the fact that the officers are confronted, not with a person who has committed a serious crime against others, but with a mentally ill individual.”

Significant Topics

- *Estate of James Chasse - 2010*
 - ▣ \$1.6 - PDX, \$925k – Mult Co., \$600k - AMR
- *Estate of Aaron Campbell - 2012*
 - ▣ \$1.2 million
- *Glenn v. Washington Co. - 2012*
 - ▣ \$2.575 million
- *Kemp v. Lane County – 2013*
 - ▣ \$500k

Significant Topics

- Purpose of the call?
- Mental health status must be taken into consideration
- Information available or apparent
- Warnings given?
- Alternatives available?
 - ▣ Take additional time?
 - ▣ Mental health crisis negotiators?

Significant Topics

□ Search and Seizure

- ▣ Search of electronic devices incident to arrest
- ▣ *Riley v. California*, 134 S. Ct. 2473 (2014)
- ▣ *Schlossberg v. Solesbee*, 2012 WL 141741 (D. Or. 2012)

- ▣ Animals, warrantless entry and exigent circumstances
- ▣ *State v. Fessenden/State v. Dicke*, 355 Or. 759 (2014)

Significant Topics

□ Homelessness/Occupy

▣ Seizure of belongings

▣ *Lavan v. Los Angeles*, 693 F.3d 1022 (9th Cir. 2012)

▣ *Desertrain v. Los Angeles*, 754 F.3d 1147 (9th Cir. 2014)

▣ Criminal cases

■ Prohibited camping

■ Plaza Closures

■ *State v. Babson*, 355 Or 383 (2014)

▣ *Occupy Eugene v. Benjamin*, (D. Or. Sep. 10, 2014)

Investigations

- Pay attention to the Collective Bargaining Agreement
- Protect work-product – ORS 30.287
- Actual Notice – ORS 30.275(6)
- Internal Affairs, Risk and Human Resources
 - ▣ Who investigates what? Is it sufficient?
- Be mindful of Grand Juries and Employment Arbitrations
- Issues with Paid Administrative Leave
- When to Notify Excess Carrier

Questions?



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