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Civil Liability Law Section – June 2017

Civil Liability and Child Abuse Investigations

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This is the third of a three-part article.

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❖ **Child Abuse Registries**

Some jurisdictions have adopted child abuse registries which operate in some ways similarly to sex offender registries, which may be used by law enforcement as an investigative tool, or carry with mandated registration a number of negative collateral consequences or a stigma.

In [Los Angeles Cty. v. Humphries](#), #09–350, 131 S.Ct. 447, 2010 U.S. Lexis 9444, the U.S. Supreme Court examined one such registry. The plaintiffs, who were accused of child abuse in California, but were later exonerated, had their names added to a Child Abuse Central Index, where they would remain available to various state agencies for at least 10 years. There was no state mechanism for contesting the

inclusion of their names, nor had Los Angeles County created any procedure to do so. They sued the county and public officials, claiming that this violated their constitutional rights. They sought damages, injunctive relief and declaratory relief.

A federal appeals court ruled that the Fourteenth Amendment required the state to provide those on the list with notice and a hearing, and that the plaintiffs were entitled to declaratory relief and were prevailing parties entitled to attorney's fees, including \$60,000 from the county.

The county objected, claiming that as a municipal entity, it was liable only if its "policy or custom" caused the deprivation of a plaintiff's federal right, but a state policy caused any deprivation here. The appeals court ruled that the plaintiffs did prevail against the county on their claim for declaratory relief because the policy or custom requirement did not apply to prospective relief claims.

The U.S. Supreme Court disagreed, holding that there can be no municipal liability in the absence of a finding of an official policy or custom regardless of the type of relief sought or awarded. Whether money damages or prospective relief such as an injunction or declaratory judgment.

❖ **Equal Protection**

Another issue that occasionally arises in the context of investigations, searches, arrests, or prosecutions involving suspected child abuse is that of accusations of violations of equal protection rights, most commonly gender bias, but occasionally other categories, such as race, religion, disability, or sexual orientation.

In [*Beltran v. Amador*](#), #03-50427, 367 F.3d 299 (5th Cir. 2004), a father in El Paso, Texas murdered his wife and fifteen-year-old daughter. The girl's grandmother filed a federal civil rights lawsuit on behalf of the decedents' estates against the city and the 911 operator who allegedly mishandled an emergency call made by the daughter seeking assistance.

The lawsuit asserted claims for violation of equal protection and due process, and the trial court denied the 911 operator's motion for summary judgment on the basis of qualified immunity.

A federal appeals court disagreed, finding that the plaintiff failed to state a claim for violation of clearly established equal protection or due process rights against the 911 operator, and ordered the entry of a judgment in her favor.

The daughter had called 911 and reported that her father was drunk and was becoming physically and verbally abusive to her and her mother. Police were dispatched and the father was arrested and charged with felony child injury. A number of months later, the daughter called 911 again.

During this call, the daughter told the 911 operator that her father had threatened her and that she was afraid for her life and hiding in a bathroom but did not indicate that she had been physically abused. She allegedly repeatedly asked the operator to “send the police” to her house, to which the operator responded that the police “were receiving the information” that she was placing into the 911 system.

At one point, the daughter informed the operator that she believed her father had left the premises, and the operator then requested information about his auto and potential destination. Before disconnecting, the operator allegedly informed the daughter that the police would be sent out.

The operator, while entering the information from the call into the dispatch computer, allegedly did not include the daughter’s statements that she feared for her life or the prior report of the father’s domestic violence. Based on the family relationship between the daughter and her father and the operator’s understanding of the situation, the operator coded the call a “family violence assault,” a priority level 4 call. The entries led a police dispatch operator to send out two general broadcasts regarding the incident.

No police units immediately responded, and soon thereafter, Herrera, who had not actually left the house, shot and killed his wife and daughter.

The federal appeals court found that the plaintiff’s equal protection claim centered on the assertion that the operator improperly classified the daughter’s call as a priority level 4 “family violence assault” call rather than a priority level 3 “injury to child in progress” call. The federal appeals court found no “statistical or even anecdotal” evidence in the record that female victims of domestic violence were “systematically shortchanged or deprived of effective law enforcement response” by the city’s 911 policies.

Further, the plaintiff failed to show that the City of El Paso assigned a lower level priority to 911 family violence assault calls “as the result of an effort to discriminate against women.” The plaintiff pointed to a question the operator asked during the call as to whether it was the daughter’s “husband or her boyfriend that was threatening her,” and during her deposition, the operator suggested that had there been no family relationship between the daughter and her assailant, she might have been able to use the injury to a child in progress code which had higher priority.

This, however, the court found was “better understood as an eminently reasonable question that an emergency operator might ask to assess the situation at hand, rather than an attempt to discriminate” against the daughter or her mother based on their relationship to the attacker.

Further, the operator’s statement that she “could” have used the injury to a child in progress code had there been no family relationship does not imply that she would have done so, as the transcript of the call indicates that at the time, the daughter’s father had not “yet actually physically attacked her,” and she was not necessarily in immediate danger of physical harm because she was hiding in a locked bathroom. The operator’s questions could be viewed simply as an attempt to “gauge” the potential danger in the situation, rather than as showing discriminatory intent towards the caller.

The court found that the plaintiff also provided no evidence that the police would have responded any more quickly if the operator had coded the call as an injury to a child in progress. “The lack of immediate police response to the family violence assault bulletin is not probable of whether the units would have responded more expeditiously to an injury to a child in progress call.” And even if police would have responded more quickly to an injury to a child in progress call, there was no evidence that they would have arrived in time to save either of the murder victims, making it “difficult, if not impossible” to determine whether any police delay or inaction in response to the family violence assault bulletin was the cause of the deaths.

Given this “dearth of evidence” of any equal protection rights, much less any “clearly established” equal protection rights, no such claim was stated.

The appeals court also rejected the argument that the operator violated the daughter’s substantive due process rights in “falsely promising” police services that

the daughter relied on to her detriment. The operator offered advice to the daughter, but did not “affirmatively place” her in custody by restraining her in the bathroom. There was, the court found, no special relationship imposing a duty to provide protection.

The appeals court found, therefore, that the general rule applied that a municipality has no duty to provide protection to a specific individual against private violence by third parties. The court therefore granted qualified immunity to the defendant operator.

In [*Woods v. Shewry*](#), #C056072, 2008 Cal. App. Lexis 1588 167 Cal. App. 4th 658; 84 Cal. Rptr. 3d 332 (3rd Dist. Cal. App.), the court ruled that California state programs that provided benefits for women and their children who were the victims of domestic violence, while denying such programs to men and their children who are the victims of domestic violence violated the equal protection guarantees of the state Constitution. Even if fewer men than women were affected by domestic violence, this did not mean that they were not similarly situated to women or provide a compelling governmental interest justifying a gender-based classification.

Similarly, in [*Hakken v. Washtenaw County*](#), #94-cv-70481, 901 F.Supp. 1245 (E.D. Mich 1995), the court held that a county could be sued for a violation of equal protection for allegedly failing to provide an adequate response to complaints by a woman and her 12-year-old daughter of domestic violence; The 12-year-old daughter had a “domestic” relationship with the 16-year-old boyfriend who sometimes slept in her bed at home and subsequently killed her. Individual officers, however, were entitled to qualified immunity because of a lack of “clearly established” case law concerning equal protection claims of domestic violence victims

In [*Abdulsalaam v. Franklin County Board of Commissioners*](#), #09-4018, 399 Fed. Appx. 62, 2010 U.S. App. Lexis 21334 (Unpub. 6th Cir.), an African-American Muslim woman and her three minor daughters sued the county, its child welfare agency, and several agency employees for actions taken in the course of a child abuse and neglect investigation. They claimed that abuse and neglect accusations were fabricated, that false information about them was released to the media, and that the defendants acted with racial and religious animus and retaliatory intent intended to “intimidate and silence” them from complaining, in violation of their

First Amendment rights. After the woman's teenage son intimated that he suffered physical abuse at home, an investigation resulted in the removal of the three daughters from the home on accusations that the mother neglected their educational needs.

A year later, the mother was exonerated, and the complaint was dismissed. A federal appeals court found that claims against two supervisory officials in the defendant agency were properly rejected as there was no evidence that they either encouraged or condoned the allegedly illegal actions of their subordinate, a defendant caseworker. The court also found no evidence that there had been any intent to "intimidate and silence" the plaintiffs from exercising their First Amendment rights.

In one case, a mother and the adoptive father sued a county and prosecutors for alleged violations of their child's Fourteenth Amendment equal protection rights by declining to prosecute the child's biological father for child sexual assault. The right to assert an equal protection claim is available to those subject to or threatened to discriminatory prosecution, the appeals court stated, but has never been recognized as extending to crime victims who claim to have been injured by the failure to prosecute an offender. As the plaintiffs' claimed injury was from the failure to prosecute the biological father, rather than based on failure to provide police protection, the court upheld dismissal of the lawsuit. [*Parkhurst v. Tabor*](#), #08-2610, 569 F.3d 61 (8th Cir. 2009).

The court in [*Seremeth v. Board of County Commissioners Frederick County*](#), #10-1711, 673 F.3d 333 (4th Cir. 2012) ruled that a deaf man arrested in a domestic violence situation involving him and one of his deaf children stated a viable disability discrimination claim. He asserted that handcuffing him in the back prevented him from writing notes in order to communicate with the deputies. "The injury is the failure to make communication as effective as it would have been among deputies and persons without disabilities."

The deputies were entitled to qualified immunity from liability, however, based on the exigent circumstances involved in a domestic violence situation. With the deputies concerned about their own safety and the safety of the man's family, it was reasonable to try to accommodate his disability by calling an American Sign Language trainee to assist in communication, and by attempting to use his father as an interpreter, even though those accommodations were not the best practices.

A father of children was not deprived of equal protection of law, nor were his due process rights as a parent violated when police officers and prosecutors failed to find probable cause to arrest his child's biological mother for kidnapping, but prosecuted him for alleged domestic violence. There was no evidence that the defendants were motivated by gender bias. [*Burrell v. Anderson*](#), #CIV.04-43, 353 F. Supp. 2d 55 (D. Me. 2005).

Similarly, in [*Hayden v. Grayson*](#), #97-1623, 134 F.3d 449 (1st Cir. 1998), a police chief's alleged failure to investigate minor females' charges that their father sexually abused them did not lead to federal civil rights liability, in absence of proof that he took this action with intent to discriminate against them as females, minors, or victims of domestic abuse.

❖ **Suggestions to Consider**

Effective child abuse prevention, detection, law enforcement, and prosecution requires cooperative efforts between parents, families, school authorities and employees, community organizations and the community at large, medical institutions and personnel, child protective agencies, law enforcement, and prosecutors.

Law enforcement agencies must, of course, develop good written policies to guide rank and file officers on how to investigate reported suspicions of child abuse, as well as carry out regular training to aid officers in being able to recognize the signs of such abuse and how to draw on all the human and institutional resources listed above to carry out this vital task, as well as knowing and keeping up to date on the applicable law. Just as important is developing and maintaining strong clear lines of communication and coordination with all the major components of the community.

❖ **Resources**

The following are some useful resources related to the subject of this article.

1. [Domestic Violence & Child Abuse](#). AELE Case Summaries.
2. [Public Protection: Minors](#). AELE Case Summaries.

3. [Abused, Neglected, Dependent or Abandoned Children Coming Under Department Control](#), Chicago Police Department Special Order S06-04-05 (September 25, 2015).
4. [AMBER Alert Best Practices Guide for Public Information Officers](#), Office of Juvenile Justice and Delinquency Prevention (NCJ 212703).
5. [Child Abuse](#). Wikipedia article.
6. Interagency Panel on Sudden Infant Death Syndrome [Guidelines for Death Scene Investigation of Sudden, Unexplained Infant Deaths](#).
7. [National Center for Prosecution of Child Abuse](#). A website of a National Center, established in 1985 by the National District Attorneys' Association as a program of the American Prosecutors Research Institute (APRI), which provides training, technical assistance, and publications to prosecutors, investigators and allied criminal justice professionals on all aspects of criminal child abuse and exploitation.
8. [Portable Guide to Investigating Child Abuse](#). U.S. Department of Justice (July 2014).

❖ **Prior Relevant Monthly Law Journal Articles**

1. [Civil Liability and Child Abuse Investigations -- Part 1](#), 2017 (4) AELE Mo. L. J. 101.
2. [Civil Liability and Child Abuse Investigations -- Part 2](#), 2017 (5) AELE Mo. L. J. 101.
3. [Civil Liability and Domestic Violence Calls -- Part One](#), 2008 (5) AELE Mo. L.J. 101.
4. [Civil Liability and Domestic Violence Calls -- Part Two](#), 2008 (6) AELE Mo. L.J. 101.
5. [Civil Liability and Domestic Violence Calls -- Part Three](#), 2008 (7) AELE Mo. L.J. 101.
6. [Domestic Violence and the Reluctant Victim](#), by Rodney Hill, J.D., 2009 (4) AELE Mo. L. J. 501.

7. [Public Protection: Civil Liability for Failure to Protect Minors](#), 2016 (8) AELE Mo. L. J. 101.

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1. [Parental Kidnapping: Using Social Media to Assist in Apprehending Suspects and Recovering Victims](#), FBI Law Enforcement Bulletin (March 2015).
2. [Interdiction for the Protection of Children](#), by Michael L. Yoder and Wayne R. Koka, FBI Law Enforcement Bulletin (February 2015).
3. [Domestic Custodial-Motivated Child Abductions](#)," by Ashli-Jade Douglas, FBI Law Enforcement Bulletin (August 2013).
4. [Teen Dating Abuse and Harassment in the Digital World Implications for Prevention and Intervention](#), by Janine M. Zweig, and Meredith Dank (Urban Institute Feb. 19, 2013).
5. [America's Children: Key National Indicators of Well-Being, 2013](#), The Federal Interagency Forum on Child and Family Statistics (2013).
6. [State Secrecy and Child Deaths in the U.S.](#), Children's Advocacy Institute of the University of San Diego School of Law (2nd Edition, 2012).
7. [Abuse, Neglect, Adoption & Foster Care Research National Incidence Study of Child Abuse and Neglect \(NIS-4\), 2004-2009](#)," U.S. Dept. of Health and Human Services, Administration for Children and Families. (March 2010).
8. [When Your Child Is Missing: A Family Survival Guide](#). (NCJRS, 2010).
9. [Internet Safety Technical Task Force Final Report](#) (Harvard University 2008).
10. [Commercial Sexual Exploitation of Children: What Do We Know and What Do We Do About It?](#) by Jay Albanese. (NCJ 215733, December 2007),
11. [Child Abductions](#), by David M. Allender, 76 FBI Law Enforcement Bulletin No. 7, pg. 1 (July 2007).
12. [Police Involvement in Child Protective Services Investigations: Literature Review and Secondary Data Analysis](#), by Theodore P. Cross, David Finkelhor, Rich Ormrod, University of New Hampshire (Sage Publications, Aug. 2005).

13. [Sudden, Unexplained Infant Death Investigations](#), by Ernst H. Weyand, 73 FBI Law Enforcement Bulletin No. 3, pgs. 10-15 (March 2004).
14. [Civil Liability in Child Abuse Cases](#), by Rowine H. Brown & Richard B. Truitt, 54 Chi.-Kent. L. Rev. 753 (1978).

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