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Civil Liability for Sexual Assault and Harassment by Officers

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1. Introduction.

From time to time, there have been lawsuits by members of the public claiming that they were subjected to sexual assault and harassment by law enforcement officers. This article examines legal issues arising in the course of those lawsuits, including questions concerning whether and when governmental entities and/or supervisory personnel may be held liable for the sexual misconduct of individual officers. Such cases have been pursued both under state law and as federal civil rights cases. At the conclusion of the article, links are given to a number of useful resources.

The following article is focused on sexual assault and harassment of members of the public by police officers, and does not discuss employment related sexual harassment or abuse. This article also does not discuss sexual misconduct lawsuits arising in the context of correctional facilities. For a discussion of that topic, see [Civil Liability for Sexual Assaults on Prisoners](#), 2007 (8) AELE Mo. L.J. 301.

2. Individual Liability

Unlike the use of physical force, including deadly force, where there is a question of whether the officer's actions were justified under the circumstances, there is, of course, no legitimate law enforcement purpose that can be served by sexual assault on or sexual harassment of members of the public.

One question, in any lawsuit is whether or not the claims made against an officer are true or not. For purposes of liability under federal civil rights law, however, an additional inquiry is whether or not an individual's misconduct was carried out "under color of state law." If it was not, the conduct is still, almost everyone would agree, deplorable, but federal law will not provide a remedy via damages.

In Chavez v. Guerrero, No. 06C2180, 465 F. Supp. 2d 864 (N.D. Ill. 2006), for instance, even though a police officer initially encountered a woman at the police station where she was filling out paperwork concerning an accident, the court found that he did not act under color of state law in motioning for her to come and see him, or in subsequently calling her on her cell phone and suggesting that they have an encounter of a "romantic" nature. At no point during these interactions, the court said, did he state that he wanted to discuss official police business, or assert police authority, so that he and the city were entitled to dismissal of constitutional claims for violation of the right to privacy and equal protection. The federal trial court did, however, keep jurisdiction over state law claim for intentional infliction of emotional distress arising from the officer's actions.

In Davis v. Standifer, No. A05A1292, 621 S.E.2d 852 (Ga. App. 2005), the court found that a female motorist's allegation that a state patrol officer, during a routine traffic stop, touched her outside of her pants near the vaginal area, and then placed his hand underneath her clothing, inserting at least one finger into her vagina, if true, was sufficient to state a federal civil rights claim for sexual battery and sexual assault against the officer individually.

Most federal courts have had little difficulty in finding that on-duty sexual misconduct by officers connected with the carrying out of their duties violates a citizen's constitutional rights. See Fontana v. Haskin, #99-56629, 262 F.3d 871 (9th Cir. 2001) in which a female motorist arrested after vehicle accident stated a claim for sexual harassment against officer who allegedly sat in the back seat of the patrol car with her during the ride to the police station, engaging in "inappropriate" touching and sexual proposition. The court found that no reasonable officer could believe that the alleged conduct did not violate the arrestee's rights under the Fourth Amendment.

Other cases of interest include:

- Employers Mutual Casualty Company v. Mallard, No. 02-10786, 402 F.3d 1085 (11th Cir. 2005). (Liability insurance policy issued to city did not provide coverage for police officer and another city employee on claims that they allegedly sexually assaulted arrestees because their alleged conduct was outside the scope of their employment).

- [Oliver v. City of Berkley](#), #01-CV-71689, 261 F. Supp. 2d 870 (E.D. Mich. 2003). (While a release agreement signed by an alleged victim of sexual assault by a former city police officer was voluntarily entered into in exchange for a plea agreement on pending intoxicated driving charges, a federal trial court ruled that there were "relevant public interests" which barred enforcement of the release. The court noted the evidence supporting the sexual assault claim and ruled that enforcement of the release could adversely affect a public interest in deterring police misconduct.).
- [Rogers v. City of Little Rock](#), #97-2286, 97-2556, 152 F.3d 790 (8th Cir. 1998). finding that an officer who allegedly raped a female motorist he followed home after stopping her for a traffic offense was liable for \$100,000 in damages, and acted "under color of law," constituting a civil rights violation.
- [Roe v. Humke](#), #96-3952, 128 F.3d 1213 (8th Cir. 1997), holding that a police officer who sexually abused an eleven-year-old school girl while off-duty did not act under color of state law and there could be no federal civil rights liability for him or a police chief, despite fact that the officer first met girl outside school where he provided security and served as a "good-will" ambassador for the department.
- [Haberthur v. City of Raymore, Missouri](#), #96-3621, 119 F.3d 720 (8th Cir. 1997), ruling that a woman's allegation that an officer followed her home and came to her workplace, sexually fondling her and threatening to give her a speeding ticket, stated a federal civil rights claim.
- [Almand v. DeKalb County](#), #95-8866, 103 F.3d 1510 (11th Cir. 1997), finding that an officer did not act "under color of state law" or violate a woman's constitutional rights by breaking into her apartment and allegedly raping her. The officer had earlier gained admission to her apartment under a pretense of discussing police business, but had exited and the woman had closed door before he broke back in again.

3. Governmental Liability

In [Mary M. v. City of Los Angeles](#), #S005910, 54 Cal. 3d 202, 285 Cal.Rptr. 99, 814 P.2d 1341 (1991), the California Supreme Court found a city liable for sexual misconduct by one of its police officers after a traffic stop. The liability found was vicarious, with the court finding that the officer made use of his official police authority to enable him to commit the alleged sexual assault.

In this case, the officer stopped and detained a female motorist while he was in uniform, armed, and on duty. After making the stop, the motorist stated, he ordered her into his patrol car, but then took her to her home, where he allegedly assaulted her. When she screamed, she asserted, he threatened to take her to jail if she did not give in. The Plaintiff contended that the officer had raped her and an award of \$150,000 to her was upheld. Based on the officer's assertion of his authority, the court believed that he could be found to be acting within the scope of his employment at the time, making his employer liable for his actions.

In [Cockrell v. Pearl River Valley Water Supply District](#), No. 2002-CA-02090-SCT, 865 So. 2d 357 (Miss. 2004). the Mississippi Supreme Court found that an officer acted in a personal capacity only and not within the scope of his employment when he allegedly embraced a motorist who he stopped and arrested for driving under the influence of alcohol and later attempted to kiss her when she returned to retrieve her driver's license. The employer of the officer, therefore, could not be held vicariously liable for his actions.

In federal civil rights cases, an official municipal policy or custom causing the misconduct must be shown to impose liability, and liability cannot simply be based on vicarious liability, the existence of an employer-employee relationship, which may be sufficient in some state cases, so long as the employee is acting within the scope of his employment. The mere fact that the individual committing the alleged misconduct is himself a policymaker, however, does not automatically mean that his actions were caused by a policy or custom. In [Wooten v. Logan](#), No. 02-5753, 92 Fed. Appx. 143 (6th Cir. 2004), for instance, the court ruled that a sheriff did not act in a policy-making capacity for the county when he allegedly engaged in statutory rape of mentally handicapped female minor by using his police vehicle's lights and siren to pull over a vehicle in which she was a passenger. The county, therefore, could not be held liable, in federal civil rights lawsuit, for sheriff's actions.

A number of plaintiffs have attempted to hold municipalities liable for police officers' alleged sexual misconduct on the basis of inadequate training. In [Teal v. City of Houston](#), Civil Action H-06-3726, 2007 U.S. Dist. Lexis 80675 (S.D. Tex.), the court ruled that the city was entitled to partial summary judgment in lawsuit by woman over officer's alleged improper sexual behavior towards her. The court rejected the plaintiff's argument that the city's failure to produce and use training materials specifically focused on improper sexual behavior was sufficient to establish a genuine issue as to whether inadequate training caused the officer's actions. The court noted that the city had numerous policies mandating ethical conduct, including towards arrestees.

Similarly, in [Currie v. Haywood County, Tennessee](#), No. 06-5683, 2007 U.S.

App. Lexis 8530 (6th Cir.), a deputy sheriff accused of attempting to kiss and fondle a woman while he was on duty, himself acknowledged that, due to his law enforcement training, he knew that it was wrong to touch females in an inappropriate manner when he came into contact with them in the course of his duties. The court found, therefore, that the plaintiff failed to show that the county's lack of policies regarding sexual harassment caused his conduct. \$25,000 in damages were awarded against the deputy himself, who had come to the plaintiff's home in response to her 911 call seeking help for her brother, who had overdosed on drugs.

When municipal liability is found for an officer's on-duty sexual misconduct, particularly when the municipality allegedly had knowledge of his tendencies to engage in such activities, damage awards can be substantial. In [Diamond v. Witherspoon](#), No. 252657, 696 N.W.2d 770 (Mich. App. 2005), a court held that a city was properly held liable, under Michigan state law, for a police officer's alleged criminal sexual conduct towards three female motorists during separate traffic stops. The court upheld a judgment of \$2.625 million against the city on the basis of jury verdict awarding the drivers \$7.5 million, and allocating 35% of the fault to the city. The court rejects argument that the damages awarded were excessive. The lawsuit was brought under a state civil rights statute under a sexual harassment claim.

In [Murray v. City of Onawa, Iowa](#), No. 02-2626, 323 F.3d 616 (8th Cir. 2003), on the other hand, while the amount of damages awarded was not substantial, the court definitely had a "message" to send to the defendant city. The court upheld an award of \$1 in nominal damages and \$7,428 in attorneys' fees against a city which allegedly took no action and began no investigation of woman's complaints to a police chief and mayor that a police officer with whom she had broken off an affair was harassing her and stalking her while on the job and in uniform. The attorneys' fee award, the court stated, should put police departments and cities "on notice" that they cannot simply ignore such complaints.

As with most lawsuits, claims for sexual misconduct are subject to applicable statutes of limitations. With sexual misconduct involving minors or other special circumstances, such time limits are sometimes "tolled" (extended), making it possible to bring such actions after a much greater lapse of time. In [Doe v. City of Los Angeles](#), No. S142546, 42 Cal. 4th 531, 169 P.3d 559 (2007), however, the California Supreme Court rejected an attempt by two men, now in their 40's to pursue their claims against the City of Los Angeles and the Boy Scouts of America concerning their alleged sexual abuse by a police officer in the 1970's when they participated in a police department Explorer Scout program. Under a California statute, such claims must be brought before the victim's 26th birthday, unless the defendant knew or had reason to know of the unlawful sexual conduct

by an employee or agent, and failed to take "reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person." The California Supreme Court upheld the dismissal of the lawsuit on statute of limitations grounds, finding that the plaintiffs failed to make specific enough allegations concerning the defendants' knowledge of the officer's alleged past sexual misconduct with minors to bring their case within the cited exception to the statute. Had there been more evidence of knowledge of the officer's alleged past actions, the reasoning of the court might have allowed the claims to go forward even after a lapse of over thirty years.

See also [T.R. v. Boy Scouts of America](#), No. 0206-5750, 133 P.3d 353 (Ore. App. 2006), review granted 2007 Ore. Lexis 187, in which an Oregon intermediate appeals court overturned an \$81,260 jury award against a city in a lawsuit arising from alleged sexual abuse, by a police officer, of a teenager involved in a police Explorer youth program. The court found that the lawsuit was time-barred under a two-year statute of limitations and that the plaintiff's claim accrued at the time the abuse allegedly occurred, not later when he testified before a grand jury proceeding concerning the incidents years later. The court rejected the plaintiff's theory that it was not until the grand jury proceeding that he had enough information to know that the city may have caused his injuries by ignoring reports of the officer's alleged abusive tendencies.

In [Davis v. Standifer](#), No. A05A1292, 621 S.E.2d 852 (Ga. App. 2005), while an officer's alleged fondling of a female motorist, if true, was sufficient to establish a federal civil rights claim against him, the court also ruled that the Georgia State Patrol and Department of Public Safety were state agencies not subject to a lawsuit for damages under 42 U.S.C. Sec. 1983, and that claims under state law were barred by sovereign immunity for losses resulting from assault, battery, or false imprisonment, based on an exception to a statute waiving sovereign immunity for certain injuries caused by governmental employees.

In some instances, under state law, a city may have a duty to indemnify officers for actions carried out within the scope of their employment. In [Doe v. City of Chicago](#), No. 03-2221, 360 F.3d 667 (7th Cir. 2004), a federal appeals court reversed a trial judge's grant of summary judgment to a city in a lawsuit brought by female motorist who claimed that a police officer broke into her home and sexually assaulted her after obtaining her home address from her driver's license during a traffic stop which might have been aimed solely at finding out where she lived. The federal appeals court speculated that Illinois Supreme Court might find that the officer, because of his assertion of his official authority, acted within the scope of his employment, triggering a duty, on the part of the city, to indemnify the officer for any judgment against him.

On the other hand, in San Diego Police Officers Ass'n v. City of San Diego, #DO17945, 29 Cal.App.4th 1736, 35 Cal.Rptr.2d 253 (1994), a California appeals court ruled that a city did not have a duty, under state law, to provide a legal defense for an officer accused by an informant of committing sexual battery on her at his residence while on vacation. Under these circumstances, the alleged sexual acts did not occur within the scope of the officer's employment

Other cases of interest concerning governmental liability include:

- Primeaux v. U.S., No. 97-2691, 181 F.3d 876 (8th Cir. 1999) ruling that the federal government was not liable for an officer's alleged rape of a female motorist when the officer's actions were outside of the scope of his employment. The court rejected the argument that the officer's "apparent authority" could serve as a basis for liability under the Federal Tort Claims Act.
- Sewell v. Town of Lake Hamilton, #95-2867, 117 F.3d 488 (11th Cir. 1997), cert. denied, #97-651, 522 U.S. 1075 (1998), overturning a \$452,000 award against town for an officer's alleged sexual molestation of a woman he stopped for speeding and took to police station, threatening to "ruin her life" with drug charges unless she undressed and lay naked on the floor. The court ruled that an alleged failure to train and supervise was not the cause of incident, since the officer should have obviously known, without any training or supervision, that this was wrong.
- West v. Waymire, #96-3675, 114 F.3d 646 (7th Cir. 1997), ruling that a town was not liable for a police officer's sexual molestation of a 13-year-old girl at a police station when it had no reason to know that he would molest a child and no policy of deliberate indifference to such conduct. The officer's alleged prior adulterous conduct with a fellow officer's girlfriend did not alter the result. The officer himself was convicted of child molestation, and held liable for \$600,000.
- Jones v. Wellham, #95-2882, 104 F.3d 620 (4th Cir. 1997), in which a federal appeals court upheld a \$1 million award to a woman raped by an on-duty police officer, and a trial court ruling that there was no basis for liability by the county. A decision by the police chief to return the same officer to duty, ten years previously, after an earlier accusation of rape, was an insufficient basis to impose liability on county for the later incident.
- Parrish v. Luckie, #91-3336, 963 F.2d 201 (8th Cir. 1992), finding a city liable for \$200,000 for an officer's sexual assault and false arrest of female auto passenger because the city had knowledge of officer's propensity for violence and failed to take preventative action.

4. Supervisory Liability

Supervisory personnel may be held liable for the wrongful actions of officers under their command if a connection can be shown between their own failure to provide adequate supervision, training, or discipline and the offending officer's actions.

In Atwood v. Town of Ellington, No.3:04cv207, 468 F. Supp. 2d 340 (D. Conn. 2007), a federal court ruled that, while a constable's alleged sexual assault on a woman, if true, violated a clearly established constitutional right, the plaintiff failed to show a connection between the alleged assault and the failure of a supervisor to report a prior alleged incident of sexual misconduct by the constable. Claims for alleged inadequate supervision or training were therefore rejected.

Various immunities available under either federal or state law may also bar supervisory liability in some instances. In McClure v. Houston County, Alabama, #02-T-1223, 306 F. Supp. 2d 1160 (M.D. Ala. 2003), the court found that an Alabama sheriff had Eleventh Amendment immunity from federal civil rights lawsuit over alleged rape of burglary victim by deputy sheriff dispatched to assist her, as he acted, under state law, on behalf of the state, not the county. The sheriff also had absolute immunity from state law official capacity claims and discretionary function immunity from individual capacity claims for negligent hiring, supervision, or training of the deputy, under state law. In Roe v. County of Lake, #C-99-4512, 107 F. Supp. 2d 1146 (N.D. Cal. 2000), on the other hand, a federal trial court ruled that a California sheriff was a county official rather than state official and therefore could be sued in his official capacity for damages under 42 U.S.C. Sec. 1983 on claim that he had a policy or custom which encouraged deputies to "violate the civil rights of women." The lawsuit, based on deputy's alleged rape of woman in her home, where he came to investigate domestic violence complaint, therefore could proceed.

The standard of supervisory liability under state law in some jurisdictions may be far looser than it is in federal court, as shown by Doe v. Forrest, Vt., #2002-184, 176 Vt. 476, 853 A.2d 48 (2004), in which the court ruled that a county sheriff could be held vicariously liable for on-duty sexual assault by deputy if the complainant shows that he was aided in committing the attack by his position as a law enforcement officer.

In Ramey v. Mudd, No. 02CA14, 798 N.E.2d 57 (Ohio App. 4th Dist. 2003), the court found that neither a county nor its sheriff were not liable, under either Ohio state law or federal civil rights law, for a deputy's sexual advances made towards a minor girl while off duty, even though he was in uniform and using a county-owned van to transport his daughter and her friends home from a movie.

The deputy, the court found, acted outside of the scope of his employment and did not act "under color" of law.

The knowledge of supervisory personnel about an officer's alleged tendencies to engage in sexual misconduct may be a basis for liability. In one case, a court ruled that a police superintendent could be sued for liability for alleged sexual abuse of eighth grade female student by a police officer assigned to school, based on alleged failure to properly select, train, evaluate and supervise the officer. The plaintiff was entitled to conduct discovery to see if the officer's record revealed a pattern of "aggressive behavior or sexual misconduct" sufficient to put the superintendent on notice that he was not an appropriate person to assign to the school. Perez v. Fajardo, #01-1143, 257 F. Supp. 2d 467 (D. Puerto Rico 2003).

Similarly, in Romero v. City of Clanton, #02-A-631, 220 F. Supp. 2d 1313 (M.D. Ala. 2002), the court found that a police chief was not entitled to qualified immunity on a detainee's claim that officer falsely arrested him and then tried to sexually molest him. The complaint presented sufficient allegations that the city ignored a known or obvious risk that the officer was highly likely to engage in sexual misconduct and abuse of power and inadequately screened him.

When supervisory personnel clearly have no such knowledge, however, they cannot be liable for failing to take action to prevent a risk that they did not know existed. See Moor v. Madison County Sheriff's Department, No. 00-6004, 30 Federal Appx. 417 (6th Cir. 2002), holding that a sheriff could not be held liable for "acquiescing" in a deputy's alleged "improper conduct" with a female passenger in his vehicle when he never learned of it until after a lawsuit was filed.

In Clancy v. McCabe, # SJC-09097, 441 Mass. 311; 805 N.E.2d 484 (2004), the highest court in Massachusetts found that a superintendent was entitled to qualified immunity on a claim for supervisory liability in a lawsuit over a state trooper's alleged actions in performing an illegal strip search and making lewd and suggestive remarks to a motorist he stopped. Five years prior to that, after their were complaints of the trooper's alleged inappropriate and unprofessional conduct toward female motorists, the trooper was suspended without pay, but the defendant allegedly backed down on a decision to fire him, returning him to duty on the highways instead. The court found that the disciplinary actions, short of discharge, that the superintendent had taken could not be found to be deliberate indifference, entitling him to qualified immunity. There was no evidence that the defendant had thought that the trooper would engaged in subsequent actions harassing other female motorists.

Other cases on supervisory liability of interest include:

- Battista v. Cannon, #96-688, 934 F.Supp. 400 (M.D. Fla 1996), in which a court declined to dismiss a lawsuit against a sheriff for negligent retention

and supervision of a deputy who allegedly threatened to take a female motorist to jail unless she had sex with him, and then sexually battered her. The suit claimed that the deputy had made similar propositions to other female motorists but that he sheriff failed to investigate

- Johnson v. Cannon, #96-201, 947 F.Supp. 1567 (M.D. Fla 1996), finding that a deputy acted "under color of state law" when he allegedly sexually assaulted a female motorist after stopping her for traffic violations, and that the sheriff could be liable on the basis of allegations of inadequate training, retention, and supervision.

5. Useful Resources

- ["Sexual Misconduct by Public Safety Officers is a Job for Us, Not the Courts,"](#) by Lou Reiter. August 2007. Includes a sample policy at the end of the article.
- [Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality,](#) by Timothy M. Maher, 28 Criminal Justice Review, Vol. 28, No. 2, 355-381 (2003).
- ["'Driving While Female': A National Problem in Police Misconduct,"](#) by Samuel Walker and Dawn Iribeck, Police Professionalism Initiative, Department of Criminal Justice, University of Nebraska at Omaha, May 2002.
- ["Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female,'"](#) by Samuel Walker and Dawn Iribeck, Police Professionalism Initiative, University of Nebraska at Omaha Department of Criminal Justice, June 2003.

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