

Chapter 2

Legal Concepts

4 hours

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Arkansas Basic Telecommunicator Course

References:

APCO Institute Public Safety Telecommunicator 1,
Seventh Edition, 2016

National Emergency Number Association,
www.nena.org

United States Department of Labor,
<https://www.dol.gov/general/topic/benefits-leave/fmla>

U.S. Equal Employment Opportunity Commission,
www.eeoc.gov

U.S. Department of Education,
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Training Aids:

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Coordination/Personnel:

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Instructional Unit Summary:

Chapter 2 Legal Concepts

Lesson Purpose:

The Telecommunicator will receive knowledge and be acutely aware that every action taken could be scrutinized within a court of law, as well as by the community served. This section will highlight the rules and regulations-from local to federal and from PSAP to response agencies served-that govern telecommunicator performance.

Instructional Objectives:

At the conclusion of this block, the student will be able to:

1. Grasp the significance of Federal Law related to their position (i.e.: ADA, FMLA, FOIA, etc.).
2. Identify Arkansas Laws related to Public Safety Communications.
3. Define liability and how to lessen liability.
4. Understand negligence.

I. Introduction

Any time there is a call to a PSAP there is an expectation of assistance. Assistance can be something as simple as giving directions or complicated as dispatching help during a major catastrophe. Citizens expect help and they expect the correct help in the shortest amount of time. Most agencies have well-developed policies and procedures and try very hard to provide a high standard of care. Still, situations can occur when calls are handled inappropriately and legal and ethical issues can arise at any time.

II. Body

A. Federal and Arkansas Laws

1. Federal Laws

- a. The Freedom of Information Act (FOIA) is a 1966 Federal Law that requires U.S. government agencies to release their records to the public upon request, unless the information sought falls into a category specifically exempt, such as National Security, an individual's right to privacy or internal agency management. This act provides for court review of agency refusals to furnish these records. Most states, including Arkansas have similar laws.
- b. Americans with Disabilities Act (ADA) requires all PSAPs to provide direct, equal access to their services for people with disabilities who use text telephones (TTY), which are also known as "telecommunication devices for the deaf" (TDD). Dialing 9-1-1 is the most familiar and effective way Americans have in finding help during an emergency.

- c. Family and Medical Leave Act (FMLA) provide certain eligible employees up to 12 weeks of unpaid job-protected leave per year. FMLA is designed to help employees balance work and family responsibilities. Employers must provide an eligible employee up to 12 weeks of unpaid leave each year for the following reasons:
 - i. For the birth and care of the newborn child of an employee
 - ii. For placement with the employee of a child for adoption or foster care
 - iii. To care for an immediate family member (spouse, child or parent) with serious health condition
 - iv. To take medical leave when the employee is unable to work because of a serious health condition.
- d. Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in local, state, and federal governments. Nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one-half times the regular rate of pay is required after 40 hours of work performed in a workweek.

2. Federal Discrimination and Harassment Laws

- a. *Title VII of the Civil Rights Act of 1964* makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, sex, or sexual orientation.

- b. *The Pregnancy Discrimination Act* is an amendment to Title VII that makes it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- c. *Equal Pay Act of 1963 (EPA)* makes it illegal to pay different wages to men and women if they perform equal work in the same workplace.
- d. *Age Discrimination in Employment Act of 1967 (ADEA)* protects people who are 40 or older from discrimination based on their age.

3. Arkansas Laws

- a. ***A.C.A.12-10-202:*** Transmissions by unauthorized persons -- Penalty. It shall be unlawful to transmit over a frequency assigned to a law enforcement agency or department unless it has been approved by the agency or department head or his or her designee. Violation of this or any other portion of this subchapter shall constitute a Class A misdemeanor.
- b. **A.C.A.12-10-208:** Official transmissions only. All radio transmissions should be used for conducting official law enforcement business only and should be as clear and concise as possible.
- c. **A.C.A.12-10-306:** Public safety communications personnel. The staff and supervisors of the 911 public safety communications center and systems shall be personnel other than law enforcement or fire officers will be considered

public safety officers for the purposes of public safety communications.

- i. Personnel shall be trained in operation of 911 system equipment and other training as necessary to operate a 911 PSAP.
 - ii. In order to attract and retain professional communications personnel to supervise and operate 911 public safety communications centers and systems, staffing plans are recommended to be based on the level of service, population of the service area, and other duties of the center.
- d. A.C.A.12-10-308: Response to requests for emergency response outside jurisdiction. A 911 public safety communications center which receives a request for emergency response outside its jurisdiction shall promptly forward the request to the public safety answering point or public safety agency responsible for that geographical area. Any emergency unit dispatched to a location outside its jurisdiction in response to such a request shall render service to the requesting party until relieved by the public safety agency responsible for that geographical area. Political subdivisions may enter into mutual aid agreements to carry out the provisions of this section.
- e. A.C.A.12-10-309: Request from the hearing and speech impaired. Each 9-1-1 public safety communications center shall be equipped with a system for the processing of requests from the hearing and speech impaired for emergency response.

- f. A.C.A.12-10-310: Records of calls - The 9-1-1 public safety communication centers shall develop and maintain a system for recording 9-1-1 calls received at the public safety answering point. A magnetic tape will satisfy this requirement.
- g. A.C.A.12-10-313: Nonemergency telephone number. Transfers of calls from 911 trunks to nonemergency numbers are discouraged because it ties up 911 trunks and may interfere with true emergency calls.
- h. A.C.A.12-10-315: False alarm, complaint, or information -- Penalty. Any person calling the number 911 for the purpose of making a false alarm or complaint and reporting false information which could result in the emergency dispatch of any public safety or private safety agency as defined in this subchapter shall be guilty of a Class A misdemeanor.
- i. A.C.A.12-10-317: 911 center -- Operation -- Rights, duties, liabilities, etc., of service providers. Subscriber information provided in accordance with this subsection shall be used only for the purpose of responding to requests for emergency service from public or private safety agencies, for the investigation of false or intentionally misleading reports of incidents requiring emergency service response, or for other lawful purposes.
- j. A.C.A.12-10-324: Response to call -- Entrance procedures. When responding to a 911 emergency call received at a public safety answering point, public safety officers of public safety agencies may use reasonable and

necessary means to enter any dwelling, dwelling unit, or other structure without the express permission of the owner when... The dwelling or structure is believed to be the geographical location of the telephone used to place the 911 emergency call as determined by an automatic locator or number identifier. Only after reasonable efforts have been made to arouse and alert any inhabitants or occupants of their presence and the officers have reason to believe that circumstances exist which pose a clear threat to the health of any person or they have reason to believe there may be a person in need of emergency medical attention present in the dwelling or structure who is unable to respond to their efforts.

- k. A.C.A.12-10-325: Training standards. The Arkansas Law Enforcement Training Academy shall develop training standards for dispatchers, supervisors, and instructors in Arkansas in consultation with the Association of Public-Safety-Communications Officials-International, Inc., and submit the training standards to the Arkansas Commission on Law Enforcement Standards and Training for approval.
- l. A.C.A. 16-84-114: Any bail bond agent attempting to apprehend a defendant shall notify the local law enforcement agency or agencies of his or her presence and provide the local law enforcement agency or agencies with the defendant's name, charges, and suspected location. Any person who violates any provision of this section shall be guilty of a Class D felony.

B. Liability, Confidentiality, Negligence, and Duty

1. Liability

- a. **Liability** is a legally enforced responsibility to pay damages for wrongful conduct. Being found liable in a situation means you are being held accountable. Liability should be a major concern for Telecommunicators.
- b. *Vicarious liability*: When one person/agency is held responsible for the actions or inactions of another person. An employer, including supervisors, can be held vicariously liable for the actions or inactions of its employees.

2. To whom are we accountable:

- a. Law Enforcement, Firefighters, and Emergency Medical personnel-A Telecommunicator has a duty to gather, input, and relay proper and accurate details to all responders in order for them to do their jobs in a safe and effective manner.
- b. Agency and Department Heads-entrust their employees to carry out their duties with the utmost accuracy. By following your department's policies and procedures, a Telecommunicator reduces the liability to one's self and the agency.
- c. Coworkers -Understanding that you are accountable to your fellow coworkers and displaying proactive communication can make a difference within your agency. Accountability is doing the work you agreed to do, performing the work correctly, and recognizing that team members are dependent on the results of your work. Trust is formed when team members

consistently demonstrate ownership, reliability, and accountability. Trust is the backbone of high performing teams.

- d. General Public - When calling 911 the caller assumes:
 - i. They have reached the right agency
 - ii. The Telecommunicator is trained, ready, and able to handle their emergency
 - iii. The Telecommunicator will automatically and immediately send the appropriate responder(s)
 - iv. Responders will arrive and provide the appropriate assistance in a timely manner.

3. Confidentiality

- a. Confidentiality involves a set of rules or a promise that limits access or places restrictions on certain types of information. Confidential information should be limited to individuals who are trained and authorized to access the information. When calling 9-1-1 the caller has an expectation and/or right of privacy. As a Telecommunicator, your caller instills their trust in you by assuming any and all information gathered will be provided to the appropriate responders, and will only be used and/or discussed for such actions.
- b. Information obtained through Arkansas Crime Information Center (ACIC) is governed by federal regulations, which impose strict confidentiality requirements to individuals who

are certified in using the system. Release of information to an unauthorized person or obtaining information for an unauthorized purpose may result in fines and/or imprisonment as prescribed in Arkansas law section 12-12-212.

- c. A breach of confidentiality occurs when an individual's private information is disclosed to a third party without his or her consent which could result in criminal and/or civil charges against the agency and/or the Telecommunicator. To reduce exposure of liability follow your agencies policies and procedures when handling request from the media, general public, or third party individuals. Such inquiries should be directed to the agencies Public Information Officer or an individual with the proper authority (keeper of the records).

4. Negligence and Duty

- a. When citizens call 9-1-1 they have an expectation of service. When the expected service does not meet basic standards, litigation could occur. In litigation, the courts gather and hear all the facts of the case. They weigh them against the standard of care to determine if anyone was negligent.
 - i. Negligence- Would be the failure to do what a reasonable and prudent person would do, failure to exercise the level of care required by law, or not following required standards. In other words it is the standard of assistance that a person would expect if you were in the caller's shoes.

- ii. Duty to Act- Before determining if anyone was negligent, it has to be determined if there was a duty to act. Duty is defined as a legal obligation that entails mandatory conduct or performance. Anytime a call for service is answered, a relationship is established. Once that relationship has been established, the Telecommunicator has a duty to act.
 - iii. Breach of Duty - Next, it has to be determined if a Telecommunicator has breached that duty. A breach of duty occurs when one person has a duty to act, but fails to live up to that standard. If the Telecommunicator fails to properly do their jobs, willfully or wantonly neglect their responsibilities, then they could be negligent. Then it is up to the court to determine the ultimate damages and causation. In other words, what was the outcome of the incident? As a result, did the action or inaction make it worse?
- b. The Telecommunicator has a duty to obtain enough information to correctly classify the incident as high priority/life threatening or low priority/with no danger against property or persons.
 - c. If a PSAP has adopted an Emergency Medical Dispatch (EMD) protocol, Telecommunicators have a duty to question the caller and give correct pre-arrival instructions based on the information they receive.
 - d. If a PSAP provides EMD protocol, it is critical that the Telecommunicators be adequately

trained and certified. A Telecommunicator who gives incorrect pre-arrival instructions may be held liable.

- e. How to Limit Liability?
 - i. The two main reasons that Telecommunicators find themselves in litigation are due to errors in call taking and/or dispatching. Because of the enormous responsibility, Telecommunicators owe it to themselves and their agency to make certain they are not a liability. Statistics have shown that most Telecommunicator lawsuits stem from a failure to send assistance.
 - ii. Some ways we can reduce the exposure of liability include but are not limited to:
 - 1. Practicing effective call-taking and communication skills
 - 2. Training and education
 - 3. Prioritizing skills
 - 4. Following departmental policies and procedures
 - iii. Although there have been a number of lawsuits filed against Telecommunicators, there are many cases where the Telecommunicator has not been found negligent. In many cases, the agency has been negligent under Title 42 United States Code Section 1983, which permits individuals to hold government employees and, in some cases, their employers accountable for violation of rights secured by the U.S. Constitution. In particular, the scope of employer liability

for claims that the constitutional violation was caused by a failure to adequately or properly train employees.

- f. *DeLong vs. Erie County, New York, 1976*
 - i. The case of DeLong vs. Erie County graphically illustrates the duty a Telecommunicator has to process a call and send the appropriate response. This was one of the first cases involving a public safety Telecommunicator.
 - ii. The deceased, Amelia DeLong, lived at 319 Victoria Boulevard in the village of Kenmore near Buffalo, New York. The area where Mrs. DeLong lived was served by the 9-1-1 emergency telephone system jointly operated by the Erie County Central Police Services and the City of Buffalo Police Department. At 9:29 A.M. on the morning of October 25th the following call was received when Mrs. DeLong dialed 9-1-1. The call lasted 14 seconds.
 - iii. The Telecommunicator recorded the address as 219 Victoria, not 319 Victoria and failed to verify the correct street address. There was a Victoria Boulevard in the village of Kenmore and a Victoria Avenue in the city of Buffalo.
 - iv. Assuming it was Victoria Avenue, the Telecommunicator relayed the information to the Buffalo police dispatcher; and the Buffalo police were dispatched to 219 Victoria Avenue. Responding officers reported that 219

Victoria did not exist. The Telecommunicator did nothing to attempt to locate the caller.

v. At approximately 9:42 a.m., Mrs. DeLong was seen running from the front door of her house naked, covered with blood and uttered, "the baby, the baby". She had seven knife wounds and died moments later from wounds to the jugular vein and carotid artery.

g. **COURT DECISION**-Mrs. DeLong's family sued the City of Buffalo and Erie County for wrongful death, resulting from the actions of the Telecommunicator. The Telecommunicator was found negligent in failing to properly record the caller's address: failing to determine the exact location of the call, failing to repeat the address for verification, and failing to follow up when no such address was reported. The trial jury found each of the defendants responsible for the death of Mrs. DeLong. The DeLong family was awarded \$800,000. (\$200,000 for pain and suffering and \$600,000 for wrongful death)

C. Law Enforcement Agencies

4. Telecommunicators are an essential element for the command and control of Officers. Telecommunicators provide accurate & detailed information so that resources can be deployed in a timely and systematic manner. Following policy & procedures may reduce exposure to liability by reducing errors. Therefore when processing calls or dispatching units, maximizing the efficiency of daily operations enhance officer safety. Officer safety and liability should

remain in the mindset of every Telecommunicator while:

- a. gathering the appropriate information and asking the appropriate questions needed for each situation.
- b. deploying accurate information to responding unit(s) i.e. location, weapons, intoxicants, suspect/vehicle descriptions, etc., and
- c. maintaining accurate unit status.

D. Fire/EMS Agencies

1. Public safety is often dependent upon the expert coordination and swift movement of both fire and EMS units. Telecommunicators are front and center for ensuring that communication is clear and that all fire/emergency medical dispatching is rapid and precise. Effective Telecommunicators require a number of proven skills including:
 - a. The ability to adequately document and communicate facts in a clear and concise manner,
 - b. Knowledge of basic fire/EMS procedures to effectively dispatch units,
 - c. A working knowledge of the jurisdictional geography to best determine responses among districts to ensure continuous coverage throughout all districts,
 - d. The ability to interpret maps, radio codes, and data received from a number of sources, and

- e. The ability to provide appropriate emergency medical assistance to callers (if properly trained/certified and per agency policy and procedure).

E. Public Safety Communications Agencies

- 1. The duty of a Public Safety Telecommunicator requires professionalism while maintaining composure and self-control in the midst of stressful situations. This means Telecommunicators must maintain high ethical standards, confidentiality, and morality while on or off duty. The Telecommunicator should possess excellent communication skills, both verbally and written, as well as strong organizational and interpersonal skills, which include but are not limited to:
 - a. answering all incoming calls to the PSAP
 - b. determining the nature of emergency; prioritizing calls
 - c. obtaining vital information regarding the emergency or situation
 - d. forwarding information to appropriate personnel; monitoring and responding to radio traffic and/or performing other related activities which includes notifying units, supervisors, and/or other agencies as required
 - e. multi-tasking, exhibiting a professional manner, and exercising good judgement to make sound decisions during emergency situations

F. Documentation, FOIA, Recordings, & Records Retention

- 1. Documentation

- a. Regardless the scale in which documentation is used; it provides the necessary information to produce an incident report. Any records provided by the Telecommunicator should be accurate and detailed with as much information as possible.
- b. When used in legal proceedings, documentation can often be critical to the outcome and can provide the court with:
 - i. Date and time of the incident
 - ii. Name of the person writing the report
 - iii. Exact location of the incident
 - iv. List of key participants: suspects, victims, etc.
 - v. Complete description of the incident in order: injuries; property loss, etc.
 - vi. How was the incident resolved
 - vii. Emergency actions taken: taser deployment, arrest, medical transport, etc.
 - viii. Person(s) notified of the incident (including name/date/time)
- c. Administrative records serve as a reliable tool for evaluations in quality assurance, in reference to policies and procedures, and job performance.

- i. **A.C.A. 25-19-103:** “Public Records” means writings, recorded sound, films, taps, electronic or computer-based information or data compilations in any medium required by law to be kept or otherwise constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, any other agency solely or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

G. FOIA

1. Agencies will receive requests for tape recordings, call logs, or any communication that was received by the PSAP. Any request for documentation maintained by the agency/jurisdiction constitutes a Freedom of Information Act request. Most likely, this would be for records that deal with dispatching a call, but could also be for employee records. Check with your supervisor and make certain that you know what records can and cannot be released. All agencies should have someone designed as “keeper of the records” to handle this task.
 - a. A.C.A.-25-19-104 Penalty: Any person who negligently violates any of the provisions of this chapter shall be guilty of a Class C misdemeanor.
 - b. A.C.A. 25-19-105: The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

- i. Undisclosed investigations by law enforcement agencies of suspected criminal activity are exempt from release.
- ii. Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy are exempt from release.
- iii. Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.
- iv. Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.
- v. A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

H. Records Retention

1. Records shall be retained for a period of at least thirty one (31) days from the date of the call and shall include the following information:

- a. Date and time the call was received and,
 - b. The nature of the problem and,
 - c. Action taken by the 9-1-1 public safety communication center personnel
 2. If records are to be kept for longer periods, your agency should have a policy outlining what records should be kept and for how long.
- I. Federal Privacy Laws
1. HIPAA
 - a. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), as well as all the administrative simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the secretary of HHS has adopted standards under HIPAA.
 2. FERPA
 - a. The Family Educational Rights and Privacy Act (FERPA) is a federal law that governs the access of educational information and records. The law applies to all schools receiving federal funding.

III. Conclusion

Effective call taking and dispatching procedures reduces liability for the Telecommunicator and the agency they serve.

Telecommunicators have a huge impact on the outcome of the call. Proper training, knowledge of policies and procedures and laws also reduce the exposure to liability.

When laziness, neglect, procedural ignorance, inadequate or delayed deployment of first responders contributes directly to an inappropriate outcome, it is only appropriate that the agency and the individuals involved should be held accountable.