



# Legal Aspects In SAR

This presentation informs SAR volunteers of their legal rights and responsibilities. It does not provide legal advice. The presenter can provide volunteers with procedural help, but not with legal advice.



# Goals & Objectives of Training

- **Core Competency Objectives**
- **Know Your Volunteer Rights**
- **Classes of SAR workers**
  - **Additional handout**
- **Know your Volunteer Responsibilities**
- **Why Lawsuits Occur and How to Avoid Them**

# Core Competency Objectives

- This session will comply and meet Core Comp Criteria for:
  - Legal Issues

Requirement	Classroom - Performance Criteria
<b>Through written evaluation the applicant will demonstrate knowledge of the legal issues involved in Search and Rescue in the State of Washington.</b>	<ol style="list-style-type: none"><li>1. Under Washington State law who is responsible for search and rescue (SAR) missions.</li><li>2. A search area may be restricted, and who may restrict the search area and for what reason may an area be restricted.</li><li>3. The basic elements of <i>RCW 38.52.180</i> and <i>38.52.410</i>.</li><li>4. The limitations of the Good Samaritan Law <i>RCW 4.24.300</i>.</li><li>5. The elements of "Duty to Act" for a SAR volunteer.</li><li>6. The elements afforded to volunteers under <i>WAC 118.04</i> pertaining to;<ol style="list-style-type: none"><li>a) Claims</li><li>b) Indemnification afforded volunteers</li><li>c) Limitations of the afforded indemnification</li></ol></li></ol>

# As a Volunteer in Washington

- You have strong protections against being held legally liable for your actions as a volunteer:
  - If you follow the proper rules, policies and regulations
- As a volunteer you are not obligated to respond to an emergency if called upon.
- The chief law enforcement officer of that jurisdiction is responsible for SAR
  - Clark County – Elected Sheriff

# General Principals

- Immunity From Liability Applies When...
  - Volunteer is engaged in a covered activity
  - Operating within scope of training and assigned duties
  - Under the direction of local Law Enforcement Agency
  - There is no gross negligence or willful or wanton misconduct
  - There is no compensation
  - There is an emergency
  - Volunteer acts in good faith (does not have to be error free)

# VOLUNTEER PROTECTION LAWS

- Federal Volunteer Protection Act
- State Volunteer Protection Statutes
- State Common Law Good Samaritan Provisions
- All Protect *volunteers* serving without compensation

# Federal Volunteer Protection Act

USC Title 42, Chapter 139 s. 14501

- Federal law generally preempts state law, except that state law may provide more protection from liability than the federal law.
- Law protects interactions with the public.
  - Provides no protection from any legal actions taken by the volunteer's own organization against him/her.

# Federal Volunteer Protection Act

(con't)

- Enacted to promote volunteerism by limiting volunteer's risk of tort liability
  - When acting for nonprofit org. or governmental entity
- Protects the volunteers, not their organizations
- Generally eliminates liability of a volunteer for
  - Damages caused by simple negligence
  - When not grossly negligent or intentionally causing harm
  - While acting within scope of responsibility to his/her organization or governmental agency



# Conditions of the VPA

- Volunteer is acting within the scope of his/her responsibility to the organization
- Volunteer is properly licensed, certified or authorized
- The harm is caused by ordinary negligence
  - i.e. no gross negligence
- Harm does not result from operating a motor vehicle, vessel, or aircraft for which a license is required by law



# Limitations to VPA Protection

- No protection for the following:
  - Crimes of violence
  - Hate crimes
  - Sexual offenses
  - Civil rights violations
  - Claims arising from use of alcohol or drugs
  - Acts of international terrorism

# References

- RCW = Revised Code of Washington
  - “Statutes” or written laws passed by the state legislature
- WAC = Washington Administrative Code
  - State regulations that have the force of law

# Washington “Good Samaritan” Law

RCW 4.24.300

- Must be a volunteer
- There must be an emergency
- There must be no compensation
  - Or expectation of compensation
- If all of the above are true:
  - There generally will be no liability for civil damages for acts or omissions
  - **Except** if there is gross negligence or willful or wanton misconduct

# Be Advised

- By volunteering to go to the scene:
  - You assume the legal duty to act as a reasonably prudent SAR volunteer.
  - Protection statutes may not keep a person from getting sued.
  - They may change the standard of care if you are covered by the law. (Negligence vs. Gross Negligence)
  - Your *own organization* still may sue you for ordinary negligence.
  - Statutes protect you from your interactions with the public.

# DO NO HARM

- SAR Volunteers
  - are dedicated to serving others in need
  - do that to the best of their ability
  - train and continue to train
  - continue learning and increasing their skill
  - meet their standards

# HOW TO GET INTO LEGAL TROUBLE

- As an individual, you are fair game for liability if your actions fall within the areas of
  - Gross negligence or Willful and Wanton Conduct
  - Breaking the law
  - Exceeding your training

# DUTY TO ACT

- Volunteers have no duty to respond to an emergency
  - Duty attaches when you agree to respond
  - Duty is that of a reasonable prudent SAR Volunteer



# Ordinary Negligence Theory

- By a preponderance of the evidence:
  - You had a **duty** to Plaintiff
  - You **breached** that duty
  - Your breach of duty caused (“**Causation**”) harm
  - There was **damage** as a result of the breach

# Gross Negligence

- Conscious and voluntary disregard
  - Of the need to use reasonable care
  - Likely to cause foreseeable grave injury or harm

# Willful and Wanton Conduct

- Conduct that is reasonably considered to cause harm or injury
  - Punitive damages likely (punishment award)

# Liability-Immunity-Assumption by State-Indemnification-Covered Volunteers

RCW 38.52.180

- Covers damage to property or injury or death
- State (or Federal government) is responsible for SAR volunteer's actions EXCEPT when there is:
  - Willful misconduct
  - Bad faith
  - Gross negligence

# Definitions (for our purposes)

- **Liability** - Accountability, either to another party or to the state, that can be enforced through damages or criminal punishment.
- **Immunity** - An exemption from a duty or penalty.
- **Assumption by State** - The act of taking for or on oneself, especially accepting, or agreeing to take the responsibility for, the obligation of another.
- **Indemnification** - Money paid for a loss or injury.
- **Covered Volunteer** - Meet the requirements under federal and state law

# “Covered Volunteer”

- Make sure you meet the requirements of governmental laws, WAC, your local sheriff, and your team.
- You only are protected if you follow the necessary procedures.
  - If you elect to search a different area than assigned and are injured you will not be covered by the State.
- If you DO NOT meet all of the requirements, you very likely will NOT have protection from liability, injury to yourself, or loss or damage regarding your property.

# Registration - WAC 118-04-080

- Registration is prerequisite for benefits
  - Register in the jurisdiction of residence or where team is located
  - May have a criminal background check
  - Must be truthful
  - Acceptance of registration is discretionary
    - Denial should only be “for cause”
  - Temporary Registration
    - name, dob, address

# Classes of Emergency Workers

WAC 118-04-100

- #13 Search and Rescue
  - Searching, rescuing, recovering
  - Ground, marine, air
  - Lost, injured, killed
  - Natural, human-caused, technological



# Classes of SAR workers

WAC 118-04-120

- Novice
- Support-qualified
- Field-qualified



# Washington State WAC 118-04-120

- **Qualifications - Novice**
  - Be physically and mentally fit for the position assigned
  - Possess sufficient knowledge of search and rescue skills and techniques to fulfill their emergency assignment



# Washington State WAC 118-04-120

- **Qualifications – Support**
  - Be physically and mentally fit for the position assigned
  - Possess knowledge of the skills required of field search and rescue emergency workers but are not required to have the field tested experience nor the physical capabilities of field-qualified personnel
  - Possess knowledge in first aid for the control of bleeding, cardiopulmonary resuscitation, bone immobilization, protection from the elements, and protection from exposure to blood borne pathogens



# Washington State WAC 118-04-120

- **Qualifications – Support**

- Possess basic knowledge of helicopter operations. Successful completion of a helicopter operations basic course approved by the emergency management division satisfies this requirement
- If duties require involvement in helicopter operations, possess demonstrated knowledge and proficiency in helicopter operations. Successful completion of a helicopter operations intermediate and, as applicable, advanced course, approved by the emergency management division satisfies this requirement



# Washington State WAC 118-04-120

- **Qualifications – Field**

- **Be physically and mentally fit for the position assigned**
- **Possess knowledge of and demonstrated proficiency in survival techniques and outdoor living.**
- **Possess knowledge in first aid for the control of bleeding, cardiopulmonary resuscitation, bone immobilization, protection from the elements, and protection from exposure to blood borne pathogens**
- **Possess knowledge in wilderness navigation including map, compass, and other navigation methods as appropriate**
- **Possess basic knowledge of helicopter operations. Successful completion of a helicopter operations basic course approved by the emergency management division satisfies this requirement**



# Washington State WAC 118-04-120

- **Qualifications – Field**
  - Possess knowledge of search and rescue techniques
  - Possess knowledge of crime scene recognition, evidence recognition, human remains recognition and the provisions of RCW 68.50.010, 68.50.020, and 68.50.050
  - If duties require involvement in helicopter operations, possess demonstrated knowledge and proficiency in helicopter operations. Successful completion of a helicopter operations intermediate, and, as applicable, advanced course approved by the emergency management division, satisfies this requirement

# Core Competency Program

- Fleshes out qualifications for each class of emergency worker
- Qualifications are listed in WAC 118-04-120
- See Task Books - Pending

# Personal Responsibilities of Emergency (SAR) Worker

WAC 118-04-200

- Certify that you will comply with all requirements
- Notify IC of using medical prescriptions or other drugs affecting assigned duties
- No narcotics or illegal controlled substances
- No alcohol
- Valid driver's license and insurance
- Obey traffic regulations
- Mentally and physically fit
- Check in with IC and complete record keeping requirements





# SAR Activities – Compensation and Reimbursement

RCW 38.52.410

- Washington law provides for the following, under certain conditions:
  - Medical and compensation coverage
  - Costs for operations over 24 hours
    - Food and lodging may be reimbursed by the state.
  - Excessive transportation for out-of county response

# Emergency Worker Duty Status

WAC 118-04-220

- Emergency workers are considered to be on duty when:
  - they are performing their duties during a mission, evidence search mission, or training event authorized by the emergency management division and they are under the direction and control of an authorized official.

# Mission Numbers

- Protections under Washington RCW and WAC attach when a mission number is assigned.
  - Make sure there is a mission number for any search or training for which you expect liability protection
  - This also would include team PR events and team meetings.
- You are free to respond to any mission you want, if requested.
- **HOWEVER**
  - You will be acting on your own, as an individual, very likely with no liability protection under the emergency worker program.

# Compensation Eligibility

WAC 118-04-300

- Participating in an authorized mission, evidence search, or training event
- Does not replace insurance requirements for vehicles, boats or aircraft (generally)
  - Or items stolen from your unlocked vehicle
- There must be adequate documentation of the claim
- There must be proper reporting of the claim

# Requirements and Procedures

## Re: Personal Injury Claims

WAC 118-04-320

- Registered worker, authorized activation and activity, properly reported
- Form completed by local Emergency Management Agency, claimant and physician
- Not from willful misconduct/gross negligence/bad faith
- Filed within 1 year
- Documentation
  - Reports, mission logs, bills, receipts, medical reports

# Requirements and Procedures Re: Property Loss and Damage Claims

WAC 118-04-340

- Registered worker, authorized activation and activity, properly reported
- Receipts and documentation
- Loss not caused from willful misconduct/gross negligence/bad faith
- Only necessary and reasonable property
- Not from normal wear and tear
- Animals included
- No recovery from theft of unsecured property

# Fuel, Toll, Ferry Expense Reimbursement

WAC 118-04-360

- Registered emergency worker
- Authorized activation and activity, **not training**
- Receipts and documentation
- Outside county, or
- More than 24 hours long deployment, or
- In county, less than 24 hours, **AND**
  - Drive more than 50 miles one way, **OR**
  - More than 100 miles during mission
- Mileage on sign in sheet must reflect amount requested for reimbursement.

# Extraordinary Expense Claims

WAC 118-04-380

- Registered worker, authorized activation and activity
  - **Not training**
- Reported or in process of being reported
- Receipts and documentation
- Lodging and feeding claims (state per diem)



# How to Prevent Legal Liability

- Know Your Chain of Command
  - The Sheriff usually is the chief law enforcement official in your jurisdiction
- Make sure a mission number has been issued
- Do not exceed your training
- Follow all guidelines, rules and regulations
- Be professional
- Document your actions
- Act as a reasonable and prudent SAR responder

# Main Reasons for Suits

- Wreck in an emergency vehicle
- Drop victim
- Equipment failure
- Improper medical treatment
- Failure to follow standard operating procedures
- Lack of communication and general foul-ups
- Record keeping problems
- Not doing “something” once victim is located

# Problem Areas

- You have excellent standards....can't meet them
- You fail to respond quickly and adequately
- You perform a negligent rescue
- You “Cover-up” a problem
- You are involved in sexual misconduct
- You engender reliance
  - You go to the sheriff and represent what you can do

# Conclusions

- You most likely will be shielded from liability claims by victims you help EXCEPT if you are
  - Grossly negligent, do willful and wanton acts, or act outside your scope of training
- You must meet all federal, state, and local requirements
- Document your actions
- You will be held to the standard of a reasonable SAR professional
- Know who is in charge at an emergency scene
- Get mission numbers for all trainings, events, fundraisers
- If sued, DON'T WORRY, DO inform team/county
- TRAIN, TRAIN, TRAIN, and follow through



QUESTIONS?