



POSITION PAPER CIVIL LIABILITY

Summary of the Issues

In recent years there has been an increase in civil liability lawsuits brought against public employees working in the criminal justice field, particularly against the public entity and public employees working in jails and prisons. By the 'grey' nature of much of the work done by probation, parole and correctional officers, these public sector employees are often left feeling vulnerable to civil liability. Further exacerbating these feelings or vulnerability have been increased legal mandates on these practitioners at the same time as pervasive curtailment in staff, resources and funding in occurring in their agencies. The recent introduction of legislation which has attempted to lessen the qualified immunity that now exists with respect to civil liability is also adding to the problem. Professional practitioners in the criminal justice field, if subjected to personal liability although not acting in a malicious, malfeasant or illegal manner, could not reasonably be expected to apply an energetic, aggressive and protective stance toward the community while being capriciously subjected to lawsuits from the criminal, ward and dependent populations which are under their charge.

Analysis

Existing California Government Code statutes provide for qualified immunity and indemnification from civil liability to the public entity and employee in carrying out ministerial functions absent negligence, fraud, illegal actions or lack of good faith. Broader immunity from liability and indemnification protection is available under existing California Government Code statutes in the area of discretionary decision making by the public entity and public employee. However, federal statute's exist that in some areas may lessen the state statute's immunity or indemnification protection. Although their qualified immunity emanates from the judiciary, in no instance do probation, parole and correctional officers have the absolute immunity or indemnification protection which is afforded to the judiciary.

The subject of civil liability and indemnification is complex and ever changing due to case law decisions. It appears that the intent of the California Legislature in adopting statutes in these areas was to make them broad and subject to case-by-case adjudication. Generally, there is a dearth of easily available, comprehensive information on case law in this area for practitioners in the criminal justice field.

Position

CPPCA supports statewide efforts to educate probation, parole and correctional officers on their protections and vulnerabilities in the area of civil liability. CPPCA supports efforts of public entities in the criminal justice field in local jurisdictions to adopt clear policy guidelines concerning civil liability for their staff and make these policies easily available to their staff. CPPCA supports legislation which broadens existing civil liability immunity and indemnification for probation, parole and correctional personnel and opposes legislation which lessens that immunity.

Adopted 1984

Reviewed and reaffirmed 1991

Reaffirmed September 2011