

Legal and Liability Considerations of Emergency Vehicle Operations

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Legal Bumbo-Jumbo

I am not an attorney. This presentation is intended for general information purposes and is not intended to substitute for qualified legal advice. It is not meant to be an exhaustive research of the laws and rulings on the issue, but may be used by department managers and operators of emergency vehicles to understand the legal implications of the operation of emergency vehicles. If you need specific legal advice, please contact your department's legal representative.



Today we will cover:

1. Legal Concepts: Your duty and care standard under the law.
2. What laws apply to the operation of emergency vehicles?
3. From which laws are operators of emergency vehicles exempt?
4. When are you exempt?
5. Legal liability for the department.
6. Personal liability for the emergency vehicle operator.
7. Volunteer firefighter/medic red lights in personal vehicles.



First, let look at some basic legal concepts...

Duty

Standard of Care



Your Duty Under The Law

Duty n. A legal obligation that entails mandatory conduct or performance.

Duty of care n. a requirement that a person act toward others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would.



Standard of Care: Due Regard or Due Care

Care n. in law, to be attentive, prudent and vigilant. Essentially, care (and careful) means that a person does everything he/she is supposed to do (to prevent an accident). It is the opposite of negligence (and negligent), which makes the responsible person liable for damages to persons injured. In theory, if a person "exercises care," a court cannot find him/her responsible for damages from an accident in which he/she is involved.



Minn. Statutes Section 169.17 (2009)

Minn. Statute Section 169.17 EMERGENCY VEHICLE. (2009)

The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle responding to an emergency call. Drivers of all emergency vehicles shall sound an audible signal by siren and display at least one lighted red light to the front, except that law enforcement vehicles shall sound an audible signal by siren or display at least one lighted red light to the front. ***This provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others.***

(emphasis added)



Your Duty With Regard to Emergency Vehicle Operation

The statutes require the driver of an emergency vehicle to use “due regard for the safety of persons using the highways” it does NOT protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others. (Minn. §169.17, Minn. §169.03)



Now, let's look at the statutes...



What is an emergency vehicle?

Minn. Statute 169.011 Subd. 3. (2009) Authorized emergency vehicle.

"Authorized emergency vehicle" means any of the following vehicles when equipped and identified according to law:

- (1) a vehicle of a fire department;
- (2) a publicly owned police vehicle or a privately owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which the officer is responsible;
- (3) a vehicle of a licensed land emergency ambulance service, whether publicly or privately owned;
- (4) an emergency vehicle of a municipal department or a public service corporation, approved by the commissioner of public safety or the chief of police of a municipality;
- (5) any volunteer rescue squad operating pursuant to Laws 1959, chapter 53;
- (6) a vehicle designated as an authorized emergency vehicle upon a finding by the commissioner of public safety that designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions.



What laws apply to the operation of emergency vehicles?

All traffic statutes in Chapter 169 apply to the drivers of government vehicles **unless specifically exempted** (Minn. §169.03 Subd 1)

Minn. Statutes Section 169.03 EMERGENCY VEHICLES. (2009)

Subdivision 1.Scope.

The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exemptions as are set forth in this chapter with reference to authorized emergency vehicles.



What are the exceptions?

Stop Signs and Semaphores

Minn. Statute Section 169.03 Subd. 2. (2009)

Stops.

The driver of any authorized emergency vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety, but may proceed cautiously past such red or stop sign or signal after sounding siren and displaying red lights, except that a law enforcement vehicle responding to an emergency call shall sound its siren or display at least one lighted red light to the front.



What are the exceptions?

One Way Roadways

Minn. Statute Section 169.03 Subd. 3. (2009)

One-way roadway.

The driver of any authorized emergency vehicle, when responding to any emergency call, may enter against the run of traffic on any one-way street, or highway where there is authorized division of traffic, to facilitate traveling to the area in which an emergency has been reported; and the provisions of this section shall not affect any cause of action arising prior to its passage.



What are the exceptions?

Speed Limits

Minn. Statute 169.17 EMERGENCY VEHICLE. (2009)

The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle responding to an emergency call. Drivers of all emergency vehicles shall sound an audible signal by siren and display at least one lighted red light to the front, except that law enforcement vehicles shall sound an audible signal by siren or display at least one lighted red light to the front. This provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others.



What are the exceptions?

Parking

Minn. Statute Section 169.03 Subd. 4. (2009)

Parking at emergency scene.

An authorized emergency vehicle, when at the scene of a reported emergency, may park or stand, notwithstanding any law or ordinance to the contrary.



Other Exemptions

Backing on freeway.....169.305 Subd 2

Using freeway crossovers.....169.305 Subd 1(b)

Car seats.....169.685 Subd 6 (2)

Window tint on side and rear glass...169.71 Subd 4 (4) (b)

Suspended objects on glass.....169.71 Subd 1 (3) (c)



Emergency Vehicles Operators Are NOT Exempt From...

Railroad crossings requirements

School Bus stop arms

Passing in a no passing zone

Careless or reckless driving

Driving while impaired

and all other traffic statutes



When are you exempt?

Minn. Statute Section 169.03 Subd. 2. (2009)

Stops.

The driver of any authorized emergency vehicle, **when responding to an emergency call**, (emphasis added)

Minn. Statute Section 169.03 Subd. 3. (2009)

One-way roadway.

The driver of any authorized emergency vehicle, **when responding to any emergency call** (emphasis added)

Minn. Statute 169.17 EMERGENCY VEHICLE. (2009)

Speed. The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle **responding to an emergency call.** (emphasis added)



When are you exempt?

Minn. Statute Section 169.03 Subd. 4. (2009)

Parking at emergency scene.

An authorized emergency vehicle, **when at the scene of a reported emergency**, may park or stand, notwithstanding any law or ordinance to the contrary. (emphasis added)

Minn. Statute Section 169.305 Subd 1, Subd 2 (2009)

Backing on Freeway, Freeway Crossovers (paraphrased) ...driver of an authorized emergency vehicle in the course of performing duties...



When are you exempt?

Your status as an emergency vehicle grants special permission only in response to an emergency call or when in pursuit of an actual or suspected violator of the law. At all other times, operators of emergency vehicles must comply with all traffic statutes.

Minn. Statutes Section 169.03, 169.17 (2009)



Liability for the Department

Liability for the department is created when its employees are negligent in the operation of emergency vehicles.

Negligence is created when employees lack due care or ordinary care in the performance of their duties.

Qualified Immunity: The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.



Liability for the Individual

However, officers are not entitled to the protections of the official immunity doctrine when there is no room to exercise discretion. Courts refer to non-discretionary duties as “ministerial.” An officer who violates a duty imposed by statute, or violates a clear, mandatory directive contained in a policy (for example, shall/shall not language) will not be entitled to official immunity. For example, officers were found not to have immunity when they violated a policy that said officers “shall not” pursue non-dangerous felons.



Liability for the Individual

Liability for the Individual is created when:

1. You have a Duty:
2. You breach that Duty (fail to perform) through an act or omission.
3. Cause damage or injury to another



You be the Judge...

Milford CT June 2009



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You be the Judge...

1. Did the officer have a duty?
2. What is the standard of care?
If it occurred in Minnesota
3. Did the officer cause damages?
2 teenagers dead



The story...

Nov 24, 2009 DERBY, Conn. -- A Milford police officer charged in the death of two teens appeared in court for the first time on Tuesday. Officer Jason Anderson made a brief court appearance in Derby on Tuesday morning. He walked out of the courthouse and refused to talk about the charges pending against him.

Anderson's brother, also a Milford Police Officer, was by his side.

Anderson was placed on paid leave until next month. His criminal case will be taken care of in Milford -- the city where he's an officer.

Anderson is accused of driving 95 mph on the way back from a mutual aid call in West Haven. On the dash-cam video, Anderson is seen speeding by another officer before slamming into the teen's car, which was turning in front of him. Ashlie Krakowski, 19, and David Servin, 19, were both killed in the crash. A memorial for Krakowski and Servin still stands at the scene.

A small computer in the police car that records gas and brake pedal use indicated Anderson had the gas pedal all the way depressed, 100 percent, for eight seconds before the crash. The on board computer also showed Anderson hitting the brake six-tenths of a second before the impact. (Emphasis added)

Anderson's arrest was the result of a three-month investigation into the crash. He was charged with two counts of manslaughter and one count of reckless driving.



Minnesota Criminal Statutes

Minn. Statutes Section 609.21 CRIMINAL VEHICULAR HOMICIDE AND INJURY. (2009)

Subdivision 1. Criminal vehicular homicide or operation; crime described.

A person is guilty of criminal vehicular homicide or operation and may be sentenced as provided in subdivision 1a, if the person causes injury to or the death of another as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol.....



Minnesota Criminal Statutes

Minn. Statutes Section 609.21 Subd. 1a. (2009) (Felony)

Criminal penalties.

(a) A person who violates subdivision 1 and causes the **death** of a human being not constituting murder or manslaughter or the death of an unborn child may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) A person who violates subdivision 1 and causes **great bodily harm** to another not constituting attempted murder or assault or great bodily harm to an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(c) A person who violates subdivision 1 and causes **substantial bodily harm** to another may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$10,000, or both.

(d) A person who violates subdivision 1 and causes **bodily harm** to another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. (emphasis added)



Minnesota Criminal Statutes

Minn. Statute Section 169.13 RECKLESS OR CARELESS DRIVING. (2009) (emphasis added)

Subdivision 1.Reckless driving.

(a) Any person who drives any vehicle in such a manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving and such reckless driving is a misdemeanor.

(b) A person shall not race any vehicle upon any street or highway of this state. Any person who willfully compares or contests relative speeds by operating one or more vehicles is guilty of racing, which constitutes reckless driving, whether or not the speed contested or compared is in excess of the maximum speed prescribed by law.

Subd. 2.Careless driving.

Any person who operates or halts any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle, is guilty of a misdemeanor.

Subd. 3.Application.

(a) The provisions of this section apply, but are not limited in application, to any person who drives any vehicle in the manner prohibited by this section:

- (1) upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water;
- (2) in a parking lot ordinarily used by or available to the public though not as a matter of right, and a driveway connecting the parking lot with a street or highway.

(b) This section does not apply to:

- (1) **an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator;**
- (2) the emergency operation of any vehicle when avoiding imminent danger; or
- (3) any raceway, racing facility, or other public event sanctioned by the appropriate governmental authority



Minnesota Criminal Statutes

Summary

Death = 10 years in prison and \$20,000 fine

Serious Injury = 5 years in prison and \$10,000 fine

Non-serious injury = 1 year in prison and \$3,000 fine

No injury = Misdemeanor crime



Risk Management

Balance risk to benefit

We balance risk everyday

Is the risk worth the benefit to self ?

Is the risk worth the benefit to others?

5 mile emergency run @100 MPH = 3.125
minutes

5 mile emergency run @60 MPH = 5 minutes

Difference of 1.875 minutes = 112 seconds

How many emergency calls will be changed by 112
seconds?



Volunteer Firefighter Red Light Permits

1. Must have a Permit issued by the Commissioner of Public Safety.
2. Must have your Fire or EMS Chief's permission by a signature on the application.
3. Application fee of \$15 to cover Criminal History search.
4. May have ONE non-flashing red lamp not to exceed 3 inch diameter.
5. May be lighted only upon response to an emergency call (to the scene or to the firehouse.)



Volunteer Firefighter Red Light Permits

No emergency vehicle status is granted and no emergency vehicle exemptions apply. The vehicle operator must comply with all traffic laws and ordinances.



Volunteer Firefighter Red Light Permits

Minn. Statute Section 169. 58 Subd 2 (2009)

The commissioner of public safety must be notified immediately upon the termination of membership in a volunteer fire department or when an ambulance or permitted emergency medical first responder ceases operations.



Volunteer Firefighter Red Light Permits

Applications can be found on the State Patrol's Website at:

http://www.dps.state.mn.us/patrol/FireFighter/Red_Light_Application_PS18068_04.pdf



In Conclusion...

1. Know the Law and Legal Risks
2. Balance Your Risk with the Expected Benefit.
3. Operate with Due Regard for Others.
4. This job is tough enough already.
 - Don't create liability for your department.
 - Don't create liability for yourself.



Questions?



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