

CIT Training Legal Aspects

HCSO Legal



Baker /Marchman Acts & Civil Liability

- F.S. 394 – Baker Act
- F.S. 397 – Marchman Act

“When a LEO makes contact, what could possibly go wrong, right?”

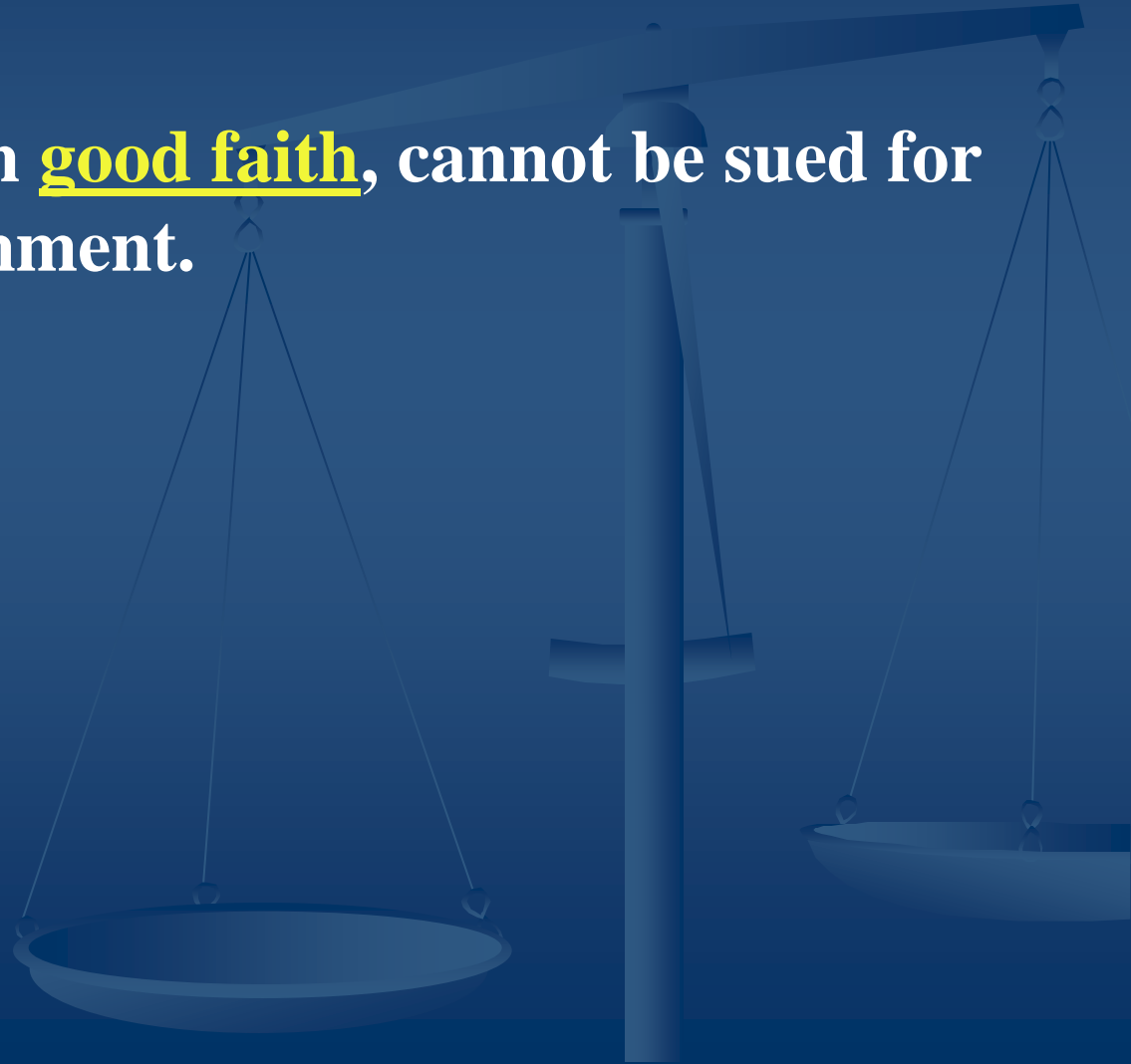


Baker Act “Immunity”

- F.S. 394.459(10)
 - Any person who acts in good faith in compliance with the Baker Act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a person to or from a facility. However, this section does not relieve any person from liability if such person commits negligence.

Marchman Act “Immunity”

- F.S. 397.6775
 - If LEO acts in good faith, cannot be sued for false imprisonment.



Overview of state liability

- Generally, a cause of action based on state law will be subject to the limitations of *Florida Statute 768.28*.
 - Where causal conduct is in the course and scope and amounts to mere negligence or intentional but good faith action, the statute protects the individual employee and the suit is against the HCSO.
 - Where causal conduct is outside the course and scope of employment or shows bad faith, or is with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, the statute protects the agency and the suit is against the employee.

FEDERAL CIVIL RIGHTS

A faint, stylized image of a pair of scales of justice is visible in the background, centered behind the text. The scales are dark blue and appear to be slightly out of focus, serving as a thematic backdrop for the legal content.

- A civil rights violation is interference with the civil rights of a person under United States Constitution, including the right to be free from unreasonable searches and seizures, the right to due process, and the right to equal protection under the law.
- Must be causal connection
 - Deliberate indifference
 - Unconstitutional Custom or Policy (or total lack of what should be a fundamental policy)

Qualified Immunity

- **In plain terms:**
 - **Standard is whether a reasonably situated deputy would have known that their actions violated clearly established law**
 - **A deputy cannot be held personally liable for excessive force unless the force utilized was so unreasonable that every other similarly situated deputy would have, or should have, known that the force was unnecessary or excessive.**
 - **In other words, if you were even close to doing the right thing , you should be protected.**

Case Example #1

Greer v. HCSO

Claim: P. sued HCSO for being seized for Baker Act, alleging excessive force, false arrest, 1983 violation, deliberate indifference, etc.

Facts: [from case]

Standard: Was there “reasonable belief” to subject Plaintiff to seizure for Baker Act?

Answer: Yes, credible individual relayed the facts (therapist)

Case Example #2

Seguine v. City of Miami

Claim: Pers. Rep. brought wrongful death when suspect drowned while LEO's tried to take custody. Suspect chose to stay in canal rather than be arrested.

Standard: [from case]

Result: No special duty owed, just general duty of reasonableness and those officers acted reasonably.

Case Example #3

McGough v. Marion County

Claim: Pers. Rep. sued after deceased was Baker Acted, taken to mental facility, attacked director, taken to jail on suicide watch and 35 days later choked to death on lunch.

Standard: Must show that jail had deliberate indifference to prisoner's suicide. That they deliberately disregarded a strong likelihood that a suicide would occur.

Case Example #4



Martinez v. Palm Bay PD

Claim: Suit brought for false arrest, 1983, etc.

Facts: [from case]

Result: S/J granted, no false arrest and level of force was reasonable given the struggle.

Case Example #5

Thompson v. Douds

Claim: 1983 excessive force lawsuit brought against TPD officers where P. left in “persistent vegetative state.”

Facts: [from case]

Result: Not entitled to qualified immunity.
Crime not severe, not an immediate threat to officers or self, continued exerting force after handcuffed and legs bound.

Case Example #6

Mercado v. City of Orlando

Claim: 1983 Lawsuit brought for excessive force where P. shot with “Sage Launcher” in head, resulting in permanent injury.

Facts: [from case]

Result: P. not threatening LEO or resisting and was not given enough time to comply with requests 15-30 seconds and shot in head....twice. It was presumed, based on the extensive training in use of sage launcher, that officer aimed for the head.

Case Example #7

Cochrane v. Harvey

Claim- Search of home violated 4th Amendment; claim against individual deputies (2 agencies) and Sheriffs

Facts- (from case)

Result- Summary Judgment Granted; search of home was permissible per emergency doctrine; Qualified Immunity for seizing deputy; no liability for Sheriffs due to no custom/policy, no direct involvement, and no failure to train.

Case Example #8

Garczynski v. Bradshaw

Claim- Excessive force, assault, battery and negligence against Agency and Individual Deputies

Facts- (from case)

Result- Officers' approach was "objectively reasonable," so no constitutional violation, and were entitled to Qualified Immunity for the claims of excessive and deadly force. Absent a constitutional violation, court would not address the claim regarding failure to have a CIT program.

Case Example #10

Troyanos v. Coats

Claim- Son of inmate who committed suicide brought suit against Sheriff and two members of jail medical staff

Facts- (from case)

Result- Failed to allege that Sheriff did not properly train, supervise, or discipline staff as required for a Section 1983 Claim of deliberate indifference against Sheriff.

Case Example #11

- Blair v. Razilou
- **Claim: Constitutional Rights violation against LEO who Marchman Acted wife/passenger of individual arrested for DUI due to her own intoxication**
- **Result: Federal Judge threw it out, no constitutional violation.....can still sue in state court (good faith)**

Ways to Avoid Civil Liability

- 1. Follow SOPs – review those used most every few months
- 2. Documents, Document, Document...
 - Do not be afraid to get involved and document your involvement and observations
 - Document the good, the bad and the ugly
- 3. If you are involved in an incident review the documents that result from the incident for accuracy and determine if any information has been omitted and requires supplementation
- 4. You are the “eyes and the ears” of the Sheriff’s Office/notify supervisor and legal department of anything that could result in civil liability.

Conclusion

Thanks for your attention, be safe, be careful, and good luck!

