

Liability of Volunteers for Government Agencies
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ISSUE: What legal provisions exist to protect volunteers of a state or local agency from lawsuits by people physically or financially injured by attempts to respond to an emergency?

ANSWER: Though no one law protects all responders in all circumstances, there are laws that cumulatively and individually provide coverage. They are summarized in a document on the DSHS Public Health Preparedness Legal Resources web page: <http://www.dshs.state.tx.us/comprep/ogc/default.shtm>. Keep in mind:

- This document or others provided to the public are not a substitute for legal advice. The summaries may omit provisions or exceptions that are relevant to your situation. You should consult a lawyer if you have any questions.
- The statutes often have exceptions and may not protect for behavior that is “willful misconduct”, “gross negligence”, “criminal” or violations of civil rights.
- The laws below protect individuals, not governmental or private entities. Laws to protect entities are not covered here.

DISCUSSION:

Government Volunteers. Volunteers are protected under both state and federal law. The protection under federal law (42 USC §§ 14501-14505) covers volunteers of governmental or non-profit organizations if the volunteers were acting within the scope of their responsibilities and applicable professional license. To qualify as a volunteer, the person should accept no reimbursement except reimbursement of expenses.

Other provisions protect volunteers engaged in “homeland security activities” at the request of state or local government. These activities are defined broadly to include a “terrorist attack, natural or man made disaster...or extraordinary law enforcement emergency” (Government Code §§421.061, 421.001). When engaged in these activities, volunteers are considered to be members of the state military forces for purposes of civil liability.

Volunteers providing requested assistance to government concerning management of a disaster are covered by Civil Practice and Remedies Code §79.003.

Volunteers providing emergency medical care may be protected under provisions of the Texas “Good Samaritan” law (Civil Practice and Remedies Code §§ 74.151, 74.152).

Civil Practice and Remedies Code Chapters 102 and 108 may cover volunteers of local government agencies, in the same manner as local government employees, if the local government elects to provide such coverage.