



OREGON YOUTH AUTHORITY
Policy Statement
Part I – Administrative Services



Subject

Tort Liability and Claims

Section – Policy Number:

A: General Administration – 4.0

Supersedes:

I-A-4.0 (09/96)

Effective Date:

11/16/2006

Date of Last

Revision:

07/16/2007

Related Standards and References:

- [ORS 30.260 through 30.300 \(Tort Actions Against Public Bodies\)](#)
- [OAR Chapter 125, Division 150 \(Risk Management\)](#)
- Department of Administrative Services, State Services Division (DAS-SSD) 125-7-201 ([Liability Self-Insurance Policy Manual](#))
- American Correctional Association, *Standards for Juvenile Correctional Facilities*, 3-JTS-1A-28 (Legal Counsel)
- OYA policy: [I-A-3.0](#) (Attorney General Opinions and Advice)
[I-C-2.0](#) (Use of State-Owned Vehicles)
[I-C-3.1](#) (Personal Use of Facilities)
- OYA forms: [YA 5014](#) (Foster Parent Liability Letter)
[YA 5015](#) (Foster Parent Notice of Claim)

Related Procedures:

- None

Interpretation: Business Services

Approved:

Robert S. Jester, Director

I. PURPOSE:

The purpose of this policy is to describe OYA responsibilities in reporting claims and/or suits against the OYA, staff, agents or lawful agents when acting in their official capacity.

II. POLICY DEFINITIONS:

Claim: A legal action to obtain money, property or the enforcement of a right protected by law against another party.

Complaint: A complaint is the initial pleading that starts the process of civil litigation, citing the grounds for the lawsuit, the plaintiff's claim, and the relief sought.

Personal liability insurance: Provides coverage to staff in connection with claims for damages to persons or property caused by alleged wrongful acts or omissions.

Torts: Wrongful acts, except for breach of contract, for which civil action may be instituted.

III. **POLICY:**

The State of Oregon is liable for its torts and those of its officers, employees, agents and lawful agents acting within the scope of their employment or contracted responsibility. DAS-SSD administers the liability fund insurance program to cover tort liability, the scope of which is limited by statute. The maximum amount of liability coverage is also limited by statute.

Defense of a staff or agent is the responsibility of the Attorney General's office. The Attorney General will reject defense of the claim if, after investigation, it is found that:

- the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, *or*
- the act or omission complained of amounted to malfeasance in office, or willful or wanton neglect of duty.

IV. **GENERAL STANDARDS:**

A. Notification process

The OYA, through its Risk Management Coordinator, will notify DAS-SSD in writing of any accident, occurrence, or loss which has resulted in, or could reasonably be assumed to result in, a liability claim or suit.

1. When a tort complaint is filed against the state concerning the OYA, the staff, agent or lawful agent may file a written request for counsel through the process outlined in OYA policy.

See related policy I-A-3.0 (Attorney General Opinions and Advice).

2. The OYA is required to cooperate with the DAS-SSD in the investigation, settlement and defense of claims, which may include attendance at hearings and trials, securing and giving evidence, obtaining the attendance of witnesses and disclosing all pertinent records and files. This process is coordinated by the Assistant Director, Business Services, or designee.
3. The OYA will not make any payment, assume any obligation, or incur any expenses concerning claims, except with the approval of the DAS-SSD.

B. Potential tort liability claims

1. If there is a reason to believe that an act by a staff, agent or lawful agent could produce a liability claim, the local office or facility will develop a written statement presenting the facts. The statement will be sent through the local management structure to the Assistant Director, Business Services, within 24 hours.
 - a) This statement will include, where available:
 - i) The time, place, and circumstances giving rise to the claim.
 - ii) The identity, address, and phone number of persons involved and any witnesses.
 - iii) Statements from the staff/agent involved or witnesses.
 - iv) Names and phone numbers of individuals who will be available for further contact.
 - b) Upon receipt of this written notification, the Assistant Director, Business Services, will determine whether to notify DAS-SSD and, if so, will forward the information to DAS-SSD, Claims Section, within 10 days of the occurrence.
2. If a staff, agent or lawful agent is contacted by an individual inquiring about claim filing procedures or intending to give oral notice of a claim, the individual will be directed to DAS-SSD, Claims Section.

C. Tort liability claims

1. Upon receipt of written notice of a claim, whether in person or by mail (usually a "demand letter" or "notice of intent to sue"), the local office or facility will forward it immediately through the local management structure to the Assistant Director, Business Services, describing:
 - a) The person upon who notice was served.
 - b) If personally presented, by whom and date received; or
 - c) If by mail, date received.
 - d) If not already submitted, the local office or facility will also develop the written statement described above within five days and forward to the Assistant Director, Business Services.

2. The Assistant Director, Business Services, will send all pertinent information to DAS-SSD. The written statement must be sent no later than 10 days after the occurrence.

D. Tort complaints

1. Whenever a staff, agent or lawful agent is served with a complaint (lawsuit), he/she will immediately telephonically notify, through the local management structure, the Assistant Director, Business Services.

- a) Copies of the summons and complaint papers, along with a description of the exact date, time, and manner in which the complaint was served will be forwarded to the Assistant Director, Business Services.

- b) The Assistant Director, Business Services, will work with the local office or facility to ensure that the Department of Justice, Trial Division, and DAS-SSD are notified.

All summons and complaint papers will be forwarded by Business Services to Chief Counsel, Trial Division, Department of Justice.

E. Claims relating to offenders in foster care

1. When a foster parent or others believe that they have a claim for damage caused by an offender in OYA custody, the foster parent or Juvenile Parole/Probation Officer will complete a YA 5015 (Foster Parent Notice of Claim) and submit it to DAS-SSD, Claims Section for each covered occurrence.

2. The YA 5014 (Foster Parent Liability Letter) may be used as a guide in completing the claim.

V. LOCAL OPERATING PROCEDURE or PROTOCOL REQUIRED: NO