



# HOUSE BILL 352: Standard of Proof/Public Safety Dispatchers

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-71

**Date:**

**Prepared by:** Bill Patterson

Staff Attorney

**SUMMARY:** *S.L. 2015-71 requires a plaintiff's case to be proved by clear and convincing evidence in any civil action arising out of an act or omission by 911 or public safety telecommunicators or dispatchers pertaining to their job duties at a public safety answering point (PSAP) or at a public safety agency receiving 911 calls from a primary PSAP for dispatch.*

*This act became effective June 11, 2015, and applies to actions arising on or after that date.*

**CURRENT LAW:** Public employees, including 911 dispatchers, may be sued in their individual capacity in a civil action for mere negligence, gross negligence, and intentional misconduct.<sup>1</sup>

In a civil action against a 911 or public safety telecommunicator or dispatcher, the plaintiff is required to prove his or her case by a preponderance of the evidence.

By contrast, in a medical malpractice action against health care professionals providing emergency medical care, the plaintiff is required to prove his or her case by clear and convincing evidence.<sup>2</sup>

"The clear and convincing evidence standard is greater than a preponderance of the evidence standard required in most civil cases, and requires evidence which should fully convince."<sup>3</sup> It is "evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear and convincing fashion."<sup>4</sup>

**BILL ANALYSIS:** The act provides that the plaintiff must prove its case by clear and convincing evidence in any civil action against a 911 or public safety telecommunicator or dispatcher arising out of an act or omission in the performance of any lawful and prescribed actions pertaining to the defendant's assigned job duties at a public safety answering point (PSAP)<sup>5</sup> or at any public safety agency receiving 911 calls from a primary PSAP<sup>6</sup> for dispatch of appropriate public safety agencies.

**EFFECTIVE DATE:** This act became effective on June 11, 2015, and applies to actions arising on or after that date.

*Brad Krehely, Counsel to House Judiciary II Committee, and Shelly DeAdder, former Research Division Staff Attorney, substantially contributed to this summary.*

<sup>1</sup> , In *Wright v. Gaston County*, 698 S.E.2d 83 (N.C. Ct. App. 2010), the Court of Appeals held that emergency dispatchers could be sued in their individual capacity for negligence in carrying out their duties.

<sup>2</sup> G.S. 90-21.12(b).

<sup>3</sup> *Schenk v. HNA Holdings, Inc.*, 170 N.C. App. 555, 560, 613 S.E.2d 503, *disc. review denied*, 360 N.C. 177, 626 S.E.2d 649 (2005).

<sup>4</sup> N.C. Pattern Jury Instruction 810.96.

<sup>5</sup> A PSAP is "[t]he public safety agency that receives an incoming 911 call and dispatches appropriate public safety agencies to respond to the call." G.S. 62A-40(18).

<sup>6</sup> A primary PSAP is "[t]he first point of reception of a 911 call by a public safety answering point." G.S. 62A-40(16).

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