



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

2015-2016 General Assembly

<b>Committee:</b>	House Judiciary III	<b>Date:</b>	April 28, 2015
<b>Introduced by:</b>	Rep. Torbett	<b>Prepared by:</b>	Bill Patterson*
<b>Analysis of:</b>	PCS to First Edition H352-CSTG-22		Committee Counsel

**SUMMARY:** House Bill 352 would provide that in any civil action arising out of an act or omission by a 911 or public safety telecommunicator or dispatcher pertaining to the defendant's job duties at a public safety answering point (PSAP) or at a public safety agency receiving 911 calls from a primary PSAP for dispatch, the plaintiff's burden of proof shall be clear and convincing evidence.

**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> The plaintiff's current burden of proof in a civil action against a 911 or public safety telecommunicator or dispatcher is by a preponderance of the evidence.

"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>2</sup> The North Carolina Pattern Jury Instructions state: "Clear and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear and convincing fashion."<sup>3</sup>

Clear and convincing evidence is currently the standard in medical malpractice actions against health care professionals providing emergency medical care.<sup>4</sup>

**BILL ANALYSIS:** House Bill 352 would provide 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 is effective when it becomes law and applies to all actions brought on or after that date.

\*Brad Krehely, Counsel to House Judiciary II Committee, and Shelly DeAdder, former Research Division Staff Attorney, 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> *Schenk v. HNA Holdings, Inc.*, 170 N.C. App. 555, 560, 613 S.E.2d 503, 508 (internal citations and quotation marks omitted), *disc. review denied*, 360 N.C. 177, 626 S.E.2d 649 (2005).

<sup>3</sup> N.C.P.I. 810.96.

<sup>4</sup> G.S. 90-21.12(b).

<sup>5</sup> "The 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> "The first point of reception of a 911 call by a public safety answering point." G.S. 62A 40(16).

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