

# Selected State Tort Law for Protester and Immigration Enforcement Related Law Enforcement Misconduct in Illinois, Louisiana, Minnesota, and Oregon

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## Overview

This is a research aid for litigation strategy and issue spotting in potential Federal Tort Claims Act (FTCA) matters involving alleged misconduct by federal officers (including ICE) and, where relevant, state or local law enforcement who have been deputized as federal law enforcement. It summarizes general state tort elements and common pitfalls, with a focus on intentional torts listed in 28 U.S.C. § 2680(h) (law-enforcement proviso) and closely related claims. It is not a substitute for checking the most recent state authority, local rules, and limitations/notice provisions. State immunities and procedural prerequisites may not map neatly onto FTCA practice; treat them as flags for deeper research.

## How to use this supplement

For each state and tort: (1) identify whether the claim is primarily common law or statutory; (2) use the stated elements and authorities to build pleadings and discovery targets; and (3) treat the practice notes as prompts for factual development in immigration enforcement and protester-related law enforcement cases.

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## Illinois

### **State tort-law framework**

- Illinois tort law is predominantly common law for intentional torts (assault, battery, false imprisonment, IIED, conversion, abuse of process, malicious prosecution). Wrongful death and survival are statutory.
- Illinois uses Restatement formulations frequently as persuasive authority, but elements are typically stated through Illinois Supreme Court and Appellate Court case law.

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### **Assault**

Source of law: Common law; often tracked to Restatement (Second) of Torts § 21.

#### **Core elements:**

- An intentional act by defendant
- That places plaintiff in reasonable apprehension of an imminent harmful or offensive contact
- With apparent present ability to carry out the threatened contact

#### **Key authority:**

- Restatement (Second) of Torts § 21 (Am. L. Inst. 1965).

#### **Practice notes for law-enforcement misconduct context:**

- In protest contexts, look for (1) pointing weapons/less-lethal launchers at close range, (2) charging with batons raised, (3) threatening deployment of chemical agents where imminent use is reasonably perceived. Assault can pair with battery where contact occurs.

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### **Battery**

Source of law: Common law.

#### **Core elements:**

- Defendant intentionally caused harmful or offensive contact with plaintiff
- Contact was without consent (or exceeded scope of consent)

#### **Key authority:**



- *Cohen v. Smith*, 269 Ill. App. 3d 1087, 1093, 648 N.E.2d 329, 334 (1995) (recognizing battery as intentional, unpermitted harmful or offensive touching).

**Practice notes for law-enforcement misconduct context:**

- Intent is satisfied by purpose or substantial certainty of contact; excessive force allegations often map cleanly onto battery. Consider documenting each discrete contact (push, strike, chemical spray, K-9 bite, projectile impact) and causation of specific injuries.
- For indirect-force cases, make the contact theory explicit: chemical spray, pepper balls, projectiles, K-9 bites, vehicle contact, or objects set in motion by officers can all be framed as contact if the officer intentionally caused the touching.
- Because privilege/legal justification will often be the defense, develop why the amount or manner of force exceeded any lawful arrest, dispersal, or crowd-control authority.

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**False Imprisonment / False Arrest**

Source of law: Common law.

**Core elements:**

- Defendant restrained or arrested plaintiff
- Plaintiff was restrained against their will
- Defendant lacked reasonable grounds / lawful authority for the restraint

**Key authority:**

- *Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 474, 564 N.E.2d 1222, 1231 (1990) (elements of false imprisonment).

**Practice notes for law-enforcement misconduct context:**

- Privilege defenses (probable cause, statutory authority) are central. For protest arrests, factual development often focuses on (1) individualized probable cause, (2) dispersal orders and audibility, (3) whether plaintiff had a realistic means of egress, and (4) duration and conditions of detention.
- Under *Meerbrey*, the core inquiry is whether the defendant restrained or arrested the plaintiff without reasonable grounds to believe the plaintiff committed an offense; in law-enforcement cases, probable cause usually defeats the claim, but overlong detention or continued restraint after the basis dissipates may remain actionable.



- For kettling or perimeter-control facts, identify the boundaries of confinement and whether a reasonable person would have understood that leaving was not permitted.
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### **Intentional Infliction of Emotional Distress (IIED)**

Source of law: Common law.

#### **Core elements:**

- Extreme and outrageous conduct
- Intent to cause, or reckless disregard of probability of causing, emotional distress
- Severe emotional distress actually suffered

#### **Key authority:**

- *McGrath v. Fahey*, 126 Ill. 2d 78, 86, 533 N.E.2d 806, 809 (1988) (elements; high bar for “extreme and outrageous”).

#### **Practice notes for law-enforcement misconduct context:**

- Illinois courts apply a demanding 'outrageousness' threshold. Patterns that can help: abuse of official power, targeting vulnerable individuals, repeated intimidation, or conduct paired with physical assault/battery. Build record of severity (medical care, functional impairment, contemporaneous reports).
  - In law-enforcement settings, do not rely only on the fact of arrest or force; emphasize aggravators such as threats to family, retaliatory or discriminatory targeting, degrading custodial treatment, deliberate denial of medical care, or conduct designed to terrorize rather than enforce the law.
  - Document severity through treatment, diagnoses, medication, panic attacks, sleep disruption, functional impairment, and contemporaneous statements, because ordinary fright or embarrassment will not usually suffice.
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### **Negligent Infliction of Emotional Distress (NIED)**

Source of law: Common law with doctrinal limits (zone-of-danger and/or bystander frameworks).

#### **Core elements:**

- Illinois traditionally requires plaintiff to have been within the zone of physical danger created by defendant’s negligence



- Plaintiff suffered a physical impact or physical injury, or physical manifestation of distress (doctrinally nuanced)
- Causation and damages

**Key authority:**

- *Corgan v. Muehling*, 143 Ill. 2d 296, 304-06, 574 N.E.2d 602, 606-07 (1991) (discussing NIED framework and limits).

**Practice notes for law-enforcement misconduct context:**

- For crowd-control incidents, NIED may track exposure to chemical agents, projectiles, stampedes, or close-range threats. Physical injury/impact evidence often strengthens the claim.
- In protest or enforcement cases, classify the plaintiff carefully as a direct victim or bystander; direct victims exposed to negligent crowd-control tactics may have a cleaner route than witnesses who were not personally endangered.
- Use NIED cautiously where intentional torts dominate; plead in the alternative when facts may show negligent planning, negligent deployment, or negligent failure to provide medical care rather than intentional force.

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**Wrongful Death and Survival**

Source of law: Statutory.

**Core elements:**

- Death caused by wrongful act, neglect, or default
- Personal representative brings action for benefit of statutory beneficiaries; damages for pecuniary injuries (and other statutorily allowed categories).
- Survival action preserves decedent's own claims for pre-death injuries.

**Key authority:**

- 740 Ill. Comp. Stat. 180/1 (Wrongful Death Act).
- 755 Ill. Comp. Stat. 5/27-6 (Survival Act).

**Practice notes for law-enforcement misconduct context:**

- FTCA cases may require careful alignment of beneficiaries and personal representatives. Maintain parallel analysis: survival (pre-death pain and suffering, medical expenses) vs wrongful death (beneficiaries' losses).



- For Illinois wrongful-death claims, separately plead the beneficiaries' losses from the estate's survival damages; the same death can produce distinct damages tracks with different proof and distribution rules.
- In law-enforcement death cases, preserve evidence of conscious pain and suffering, time between injury and death, medical expenses, funeral expenses, and family dependency/grief evidence early.

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### **Conversion**

Source of law: Common law.

#### **Core elements:**

- Plaintiff's right to the property
- Defendant's unauthorized and wrongful assumption of control, dominion, or ownership over the property
- Demand and refusal may be required in some settings (especially where initial possession was lawful)

#### **Key authority:**

- *In re Thebus*, 108 Ill. 2d 255, 259-60, 483 N.E.2d 1258, 1260 (1985) (conversion as unauthorized assumption of control over personal property).

#### **Practice notes for law-enforcement misconduct context:**

- Potential protester applications include seizure/destruction of phones, cameras, signs, medical supplies, and personal effects. Document chain of custody, inventory receipts, and requests for return.
- If officers initially had lawful possession, include demand-and-refusal facts when available; if property was destroyed, wiped, discarded, or used beyond any seizure authority, explain why a demand would be futile or unnecessary.
- For phones and cameras, distinguish loss of the device from loss or deletion of data, and preserve proof of ownership, contents, chain of custody, repair/replacement cost, and efforts to obtain return.

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### **Abuse of Process**

Source of law: Common law.



### **Core elements:**

- Existence of an ulterior purpose
- An act in the use of process not proper in the regular prosecution of the proceeding

### **Key authority:**

- *Svenson v. Engelke*, 201 Ill. App. 3d 1028, 1035, 559 N.E.2d 1304, 1309 (1990) (elements; requires misuse after process issued).

### **Practice notes for law-enforcement misconduct context:**

- Harder fit for street-level encounters; more plausible where officials initiate or use court processes (protective orders, subpoenas, warrants) to harass or suppress protest activity. Distinguish from malicious prosecution (wrongful initiation).
- The key distinction from malicious prosecution is post-issuance misuse: bad motive in obtaining a warrant or charge is not enough unless the process is later used to coerce, extort, intimidate, or obtain a collateral objective.
- Examples to investigate include subpoenas used to chill organizing, warrants used to seize unrelated materials, or criminal process leveraged to force immigration cooperation or silence complaints.

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## **Malicious Prosecution**

Source of law: Common law.

### **Core elements:**

- Defendant commenced or continued judicial proceeding
- Termination in plaintiff's favor
- Absence of probable cause
- Malice
- Damages

### **Key authority:**

- *Swick v. Liautaud*, 169 Ill. 2d 504, 512, 662 N.E.2d 1238, 1242 (1996) ((listing malicious-prosecution elements and explaining that nolle prosequi is favorable only when the abandonment is indicative of innocence).

### **Practice notes for law-enforcement misconduct context:**



- Look closely at what counts as a favorable termination and at probable-cause evidence generated by mass-arrest processing. Parallel criminal defense records can be decisive.
  - In mass-arrest matters, collect dismissal orders, prosecutor statements, body-camera footage, arrest reports, and any communications showing why charges were dropped; a bare nolle prosequi may require additional facts showing innocence-related termination.
  - To show officer causation after prosecutor involvement, focus on fabrication, materially misleading reports, omitted exculpatory facts, pressure on prosecutors, or standardized arrest narratives that obscured individualized probable cause.
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## Louisiana

### **State tort-law framework**

- Louisiana is a civil-law jurisdiction anchored in the Louisiana Civil Code. Many intentional-tort concepts (battery, assault, false imprisonment, IIED, conversion) are recognized through Civil Code art. 2315 'fault' and Louisiana Supreme Court jurisprudence.
  - Wrongful death and survival are codified in Civil Code arts. 2315.1 and 2315.2, with specific beneficiary ordering and prescriptive periods.
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### **Assault**

Source of law: Civil Code art. 2315 (fault) and jurisprudence; Louisiana recognizes assault as intentional act creating reasonable apprehension of harmful contact.

### **Core elements:**

- Intentional act (threat) by defendant
- Reasonable apprehension of imminent harmful or offensive contact
- Apparent ability to carry out the threat

### **Key authority:**

- La. Civ. Code art. 2315 (general delictual responsibility).
- La. Rev. Stat. § 14:36 (defining assault as an attempt to commit battery or intentional placement of another in reasonable apprehension of receiving a battery, a useful but criminal-code formulation often used as an analogy in civil delict analysis).

### **Practice notes for law-enforcement misconduct context:**

- In policing contexts, assault often overlaps with battery/excessive force; plead both where there is apprehension and contact.
  - For Louisiana, consider pleading both attempted-battery and apprehension theories where facts support them: an attempted strike, dog deployment, vehicle lunge, or aimed firearm can matter even if contact does not occur.
  - As elsewhere, mere words are weaker without conduct showing apparent ability and immediacy; document officer positioning, weapon posture, commands, distance, and plaintiff's perception.
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## Battery

Source of law: Civil Code art. 2315 and jurisprudence.

### Core elements:

- Intentional harmful or offensive contact with plaintiff
- Without consent
- Causation and damages under fault principles

### Key authority:

- La. Civ. Code art. 2315.
- *Caudle v. Betts*, 512 So. 2d 389, 391-92 (La. 1987) (battery is harmful or offensive contact resulting from an act intended to cause such contact; defendant may be liable for unintended and unforeseeable consequences of the battery).
- *Kyle v. City of New Orleans*, 353 So. 2d 969, 971-72 (La. 1977) (police-use-of-force cases analyzed under tort principles; excessive force can support liability).

### Practice notes for law-enforcement misconduct context:

- Louisiana often analyzes police-force claims through reasonableness and the 'duty-risk' framework, but intentional battery remains a useful framing when force is purposeful (strikes, tackles, K-9 deployment, chemical agent use).
- Use *Caudle* to make clear that the officer need not intend the full extent of injury if the officer intended the harmful/offensive contact itself.
- For FTCA claims, describe both intentional contact and unreasonableness: the same facts may support battery and negligence/duty-risk theories in the alternative, depending on how the government characterizes the conduct.

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## False Imprisonment / False Arrest

Source of law: Civil Code art. 2315 and jurisprudence.

### Core elements:

- Detention or restraint of plaintiff against will
- Unlawfulness (lack of legal cause/authority); often turns on probable cause

### Key authority:

- *Kyle v. City of New Orleans*, 353 So. 2d 969, 971 (La. 1977) (false imprisonment and false arrest principles; probable cause focus).

**Practice notes for law-enforcement misconduct context:**

- Develop record on: individualized probable cause, curfew/dispersal orders, and the mechanics of detention (handcuffing, transport, booking, denial of release).
  - Louisiana courts focus on reasonable cause as actually known to the officer; compare officer narratives against body-camera footage, witness statements, dispatch records, and whether officers ignored exculpatory facts.
  - For immigration-enforcement contexts, separate civil immigration authority from criminal probable cause and identify the legal basis allegedly authorizing each stage of restraint.
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**IIED**

Source of law: Jurisprudence under Civil Code fault principles.

**Core elements:**

- Extreme and outrageous conduct
- Intent to inflict severe emotional distress, or knowledge that distress is substantially certain
- Severe emotional distress

**Key authority:**

- *White v. Monsanto Co.*, 585 So. 2d 1205, 1209 (La. 1991) (elements; high threshold).

**Practice notes for law-enforcement misconduct context:**

- Louisiana's IIED standard is demanding and often requires conduct that is truly extreme or a pattern of harassment. Allegations of retaliatory targeting, threats, or degrading treatment during detention may help.
  - In law-enforcement cases, IIED is most plausible where officers exploit custody, immigration vulnerability, medical vulnerability, or isolation to terrorize or humiliate, especially through repeated conduct or threats unrelated to legitimate enforcement.
  - Build severity with clinical evidence and functional impairment; Louisiana courts are skeptical of ordinary distress arising from a single confrontation unless the conduct is exceptionally egregious.
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## **NIED / Mental Anguish**

Source of law: Louisiana recognizes recovery for mental anguish in several contexts under Civil Code jurisprudence (including bystander and direct-victim theories).

### **Core elements:**

- For bystander claims, plaintiff must meet the Lejeune criteria (relationship, contemporaneous awareness, severe distress).
- For direct-victim mental anguish, analyze under duty-risk and foreseeability; physical injury strengthens claim but is not always required.

### **Key authority:**

- *Lejeune v. Rayne Branch Hosp.*, 556 So. 2d 559, 570-71 (La. 1990) (bystander mental-anguish criteria).
- *Moresi v. State, Dep't of Wildlife & Fisheries*, 567 So. 2d 1081, 1095-96 (La. 1990) (mental anguish damages; duty-risk framing).

### **Practice notes for law-enforcement misconduct context:**

- In protest cases, direct-victim mental anguish can be pled alongside battery/false imprisonment; bystander claims may arise where family members witness severe injury during crowd-control events.
- For direct victims, tie mental anguish to a recognized delictual wrong such as battery, false imprisonment, property destruction, negligent use of force, or breach of a custodial/medical duty; avoid presenting it as abstract emotional upset alone.
- For family witnesses, plead Lejeune carefully: qualifying relationship, contemporaneous observation or immediate aftermath, serious injury/death, and severe, foreseeable distress.

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## **Wrongful Death and Survival**

Source of law: Statutory (Civil Code).

### **Core elements:**

- Wrongful death action belongs to specified beneficiaries in ranked order; damages for their losses.
- Survival action preserves decedent's claim for damages the decedent sustained prior to death, in favor of specified beneficiaries.

### **Key authority:**



- La. Civ. Code art. 2315.2 (wrongful death).
- La. Civ. Code art. 2315.1 (survival action).

**Practice notes for law-enforcement misconduct context:**

- Beneficiary ordering is strict and must be pled carefully. Note prescriptive period and the interaction between survival and wrongful death damages (pre-death vs post-death harms).
- Louisiana wrongful-death and survival claims have distinct beneficiaries, damages, and accrual concepts; identify the proper class of beneficiaries before presentment and before settlement discussions.
- In custodial death or force cases, preserve pre-death evidence for survival damages and post-death family-loss evidence for wrongful death; do not collapse the two theories.

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**Conversion (movables)**

Source of law: Jurisprudence under Civil Code fault principles; Louisiana conversion is fault-based.

**Core elements:**

- Plaintiff's ownership or right to possession of a movable
- Defendant's wrongful act of dominion over the movable inconsistent with plaintiff's rights
- Fault (including intent or negligence) causing deprivation

**Key authority:**

- *Dual Drilling Co. v. Mills Equip. Invs., Inc.*, 721 So. 2d 853, 857 (La. 1998) (conversion predicated on fault; major interferences with movable property).
- *Jarreau v. Quackenbush*, No. 3:08-cv-557, 2010 WL 2545605, at \*9 (M.D. La. June 21, 2010) (summarizing Dual Drilling fault-based conversion).

**Practice notes for law-enforcement misconduct context:**

- Protest applications include seized/destroyed phones, cameras, and personal effects. Louisiana's emphasis on fault and 'major interferences' can be helpful where property is destroyed or retained.



- For law-enforcement seizures, plead the precise fault: unlawful seizure, negligent loss, intentional destruction, refusal to return, transfer outside lawful process, or use inconsistent with plaintiff's possessory rights.
  - Because Louisiana treats conversion of movables through civil-code fault principles, preserve both property-value proof and facts showing the officer or agency conduct was wrongful rather than merely mistaken but privileged.
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### **Abuse of Process**

Source of law: Jurisprudence (not frequently litigated; often overlaps with malicious prosecution).

#### **Core elements:**

- Use of legal process
- Ulterior purpose
- Willful act in the use of process not proper in the regular conduct of proceeding

#### **Key authority:**

- *Duboue v. City of New Orleans*, 909 F.2d 129, 132 (5th Cir. 1990) (applying Louisiana law and stating that abuse of process requires ulterior purpose and a willful act in use of process not proper in the regular prosecution of the proceeding); *Waguespack, Seago & Carmichael v. Lincoln*, 768 So. 2d 287, 290-91 (La. Ct. App. 2000) (same).
- *Price v. City of Bossier*, 2021 (5th Cir.) (noting Louisiana recognizes abuse-of-process tort claims in arrest-related contexts; state-law elements are drawn from Louisiana jurisprudence).

#### **Practice notes for law-enforcement misconduct context:**

- Because Louisiana sources vary, treat abuse-of-process as a flag for deeper jurisdiction-specific research when officials use warrants, subpoenas, or court filings to retaliate.
- The stronger formulation requires more than an improper motive: identify the coercive act after process issues and the collateral objective for which the process was used.
- In enforcement cases, look for warrants, subpoenas, criminal summonses, or release conditions used to intimidate witnesses, suppress organizing, obtain immigration cooperation, or seize materials unrelated to the proceeding.



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### **Malicious Prosecution**

Source of law: Jurisprudence.

#### **Core elements:**

- Commencement or continuance of a judicial proceeding
- Legal causation by defendant
- Bona fide termination in plaintiff's favor
- Absence of probable cause
- Malice
- Damages

#### **Key authority:**

- *Jones v. Soileau*, 448 So. 2d 1268, 1271 (La. 1984) (elements).

#### **Practice notes for law-enforcement misconduct context:**

- Louisiana courts emphasize probable cause and honest/reasonable belief when charges were pressed. Record of officer fabrication or omissions is central.
  - Legal causation is often the pressure point: show that officers did more than serve as passive witnesses by initiating, urging, fabricating, or materially shaping the prosecution.
  - For protest arrests, compare charging documents against video and dispersal evidence; identify boilerplate or false statements that supplied the prosecution's probable-cause basis.
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## **Minnesota**

### **State tort-law framework**

- Minnesota recognizes the core intentional torts largely through common law; courts regularly rely on Restatement (Second) of Torts formulations and Minnesota Civil Jury Instruction Guides (CIVJIG) as practical summaries.
  - NIED is notably constrained by the zone-of-danger rule absent specific exceptions.
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**Assault (civil)**

Source of law: Common law; Restatement (Second) of Torts § 21; Minnesota cases often describe assault as intentional creation of apprehension.

**Core elements:**

- Intent to cause apprehension of immediate harmful or offensive contact (or knowledge with substantial certainty)
- Plaintiff's reasonable apprehension of such contact
- Imminence

**Key authority:**

- Restatement (Second) of Torts § 21 (Am. L. Inst. 1965).

**Practice notes for law-enforcement misconduct context:**

- Useful when force is threatened but not applied (e.g., aiming weapons, threatening baton strikes, advancing line in a way that creates imminent fear).
- Minnesota assault should be developed as an apprehension tort: document the officer's words, weapon position, distance, whether the plaintiff saw the threat, and why contact appeared immediate.
- Threats by police lines, dogs, launchers, or vehicles are strongest where the plaintiff can show personal targeting or direct exposure rather than only witnessing force used against others.

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**Battery**

Source of law: Common law; Restatement (Second) of Torts § 13.

**Core elements:**

- Intentional touching (direct or indirect)
- Touching is harmful or offensive
- Without consent or legal justification

**Key authority:**

- *Johnson v. Morris*, 453 N.W.2d 31, 41 (Minn. 1990) (citing Restatement definition of battery).

**Practice notes for law-enforcement misconduct context:**



- Battery in Minnesota aligns with classic Restatement intent principles. For crowd-control tools, include contact by projectiles and chemical agents as 'touching.'
- For law-enforcement defendants, expect privilege/reasonableness defenses; plead facts showing unnecessary force, force after control was achieved, force against nonresistance, or force disproportionate to any legitimate objective.
- For chemical-agent and projectile cases, link each deployment to physical contact, symptoms, medical treatment, and the officer/unit responsible where possible.

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### **False Imprisonment**

Source of law: Common law.

#### **Core elements:**

- Intentional confinement of plaintiff within boundaries fixed by defendant
- Confinement is unlawful (without legal authority or plaintiff's consent)
- Plaintiff is aware of confinement or harmed by it

#### **Key authority:**

- *Peterson v. Sorlien*, 299 N.W.2d 123, 131 (Minn. 1980) ((false imprisonment requires words or acts intended to confine plaintiff, actual confinement, and plaintiff's awareness of the confinement).).

#### **Practice notes for law-enforcement misconduct context:**

- In mass-arrest settings, focus on: (1) individualized basis for confinement, (2) whether plaintiff had a safe/known avenue of exit, and (3) custodial conditions (transport, holding cells, denial of medical care).
- Confinement may be accomplished by force, threats, barriers, police lines, vehicles, or commands where a reasonable person would not feel free to leave; voluntary compliance or a real safe exit can weaken the claim.
- Where an arrest is supported by probable cause, examine whether later detention became unlawful because paperwork, transport, release, medical care, or identification processing was unreasonably prolonged.

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### **IIED**

Source of law: Common law (narrowly applied).

**Core elements:**

- Extreme and outrageous conduct
- Intentional or reckless infliction of emotional distress
- Severe emotional distress

**Key authority:**

- *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 438-39 (Minn. 1983) (adopting Restatement approach and elements).

**Practice notes for law-enforcement misconduct context:**

- Minnesota courts emphasize that IIED is reserved for truly extreme conduct. Abuse of official authority plus physical violence can help meet the threshold.
- Build the claim around facts that move beyond ordinary arrest stress: gratuitous violence, racial/anti-immigrant abuse, intentional humiliation, threats of deportation or family separation, denial of urgent medical needs, or repeated coercive conduct.
- Severity proof is critical in Minnesota; gather medical and therapeutic records, declarations from family or coworkers, and evidence of functional impairment.

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**NIED**

Source of law: Common law; zone-of-danger rule with limited exceptions.

**Core elements:**

- Defendant's negligent conduct placed plaintiff in a zone of danger of physical impact
- Plaintiff reasonably feared for own safety
- Severe emotional distress with physical manifestation (often required in practice)
- Causation and damages

**Key authority:**

- *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 770-72 (Minn. 2005) (zone-of-danger requirement and limits).

**Practice notes for law-enforcement misconduct context:**

- In protest scenarios, NIED is strongest where plaintiff was exposed to kinetic/chemical force or imminent trampling and can show medical sequelae (panic, PTSD symptoms, sleep disruption, GI symptoms).



- Differentiate direct exposure from bystander observation. A plaintiff who inhaled gas, was nearly struck by projectiles, trapped in a crowd crush, or threatened by vehicles/K-9s is better positioned than a plaintiff who only witnessed injury from outside the danger zone.
- Minnesota's physical-manifestation requirement makes contemporaneous records especially useful: EMS encounters, urgent care visits, asthma exacerbation, vomiting, tremors, nightmares, panic symptoms, or documented PTSD symptoms.

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### **Wrongful Death and Survival**

Source of law: Statutory (Minnesota Wrongful Death Act).

#### **Core elements:**

- Wrongful act or omission causing death
- Trustee appointed to sue for next of kin
- Damages measured under Minnesota statute and case law

#### **Key authority:**

- Minn. Stat. § 573.02 (Wrongful Death).

#### **Practice notes for law-enforcement misconduct context:**

- Appointment of trustee and identification of next of kin are threshold steps. Consider parallel survivorship claims if available under Minnesota law for pre-death injuries.
- Minnesota wrongful-death practice is trustee-centered; confirm appointment authority early before filing or presenting claims, and separate next-of-kin damages from any claims that may survive independently.
- For deaths following police force or detention, develop causation through medical-examiner materials, jail/transport logs, body-camera footage, emergency-response timing, and evidence of pre-death conscious pain.

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### **Conversion**

Source of law: Common law.

#### **Core elements:**

- Plaintiff has a possessory interest in personal property
- Defendant willfully interfered with that property without lawful justification



- Interference deprived plaintiff of use and possession

**Key authority:**

- *Pick v. Citizens State Bank of Hayfield*, 2003 WL 21911090, at \*3 (Minn. Ct. App. Aug. 12, 2003) (describing conversion as willful interference with personal property, depriving another of use and possession).
- *Lassen v. First Bank Eden Prairie, N.A.*, 514 N.W.2d 831, 838 (Minn. Ct. App. 1994) (conversion as unauthorized assumption and exercise of right of ownership over personal property).

**Practice notes for law-enforcement misconduct context:**

- Law-enforcement seizures can be privileged if authorized; conversion becomes relevant where items are retained, damaged, or destroyed outside lawful processes.
- Conversion becomes stronger where property is retained after release, destroyed without process, used for purposes outside the seizure, or withheld despite a clear right to return.
- For phones, cameras, IDs, medication, and immigration documents, track not only market value but consequential harms caused by deprivation, while checking whether Minnesota conversion law allows those categories of damages in the particular posture.

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**Abuse of Process**

Source of law: Common law.

**Core elements:**

- Existence of an ulterior purpose
- Use of process to accomplish a result not within the scope of the proceeding

**Key authority:**

- *Hoppe v. Klapperich*, 224 Minn. 224, 242, 28 N.W.2d 780, 792 (1947) (classic statement of abuse-of-process doctrine).

**Practice notes for law-enforcement misconduct context:**

- Useful in protest contexts primarily where legal process is used as leverage (e.g., subpoenas or warrants used to retaliate), not for on-scene force.



- As in other states, the issue is not merely wrongful initiation; identify the coercive use of already-issued process to obtain a collateral result, such as chilling protest participation, compelling cooperation, or intimidating witnesses.
  - Discovery should target communications about why warrants, subpoenas, citations, or conditions of release were used and whether officials sought a result outside the normal function of that process.
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### **Malicious Prosecution**

Source of law: Common law.

#### **Core elements:**

- Defendant initiated or continued a proceeding
- Proceeding terminated in plaintiff's favor
- Absence of probable cause
- Defendant acted with malice
- Damages

#### **Key authority:**

- *Dunham v. Roer*, 708 N.W.2d 552, 568 (Minn. Ct. App. 2006) (restating elements).

#### **Practice notes for law-enforcement misconduct context:**

- Track favorable termination carefully; expungements, diversion, and dismissals may require nuanced analysis.
- Where prosecutors exercised independent judgment, plead facts tying officers to the prosecution through false statements, material omissions, pressure, or knowingly defective charging narratives.
- For low-level protest charges, preserve docket entries and prosecutor explanations; dismissals for mercy, compromise, diversion, or procedural convenience may raise harder favorable-termination questions than merits-based dismissals.



## Oregon

### **State tort-law framework**

- Oregon recognizes the core intentional torts through common law, frequently adopting Restatement definitions expressly. Wrongful death is statutory (ORS 30.020).
- Oregon has specific limitations rules for assault, battery, and false imprisonment (ORS 12.110) and a public-body tort-claims notice regime (ORS 30.275) that can influence state-law analogies and strategy.

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### **Assault**

Source of law: Common law; Oregon distinguishes criminal assault from the civil tort concept; Restatement (Second) of Torts § 21 is commonly used for the civil definition.

#### **Core elements:**

- Intentional act intended to cause apprehension of imminent harmful or offensive contact
- Plaintiff's reasonable apprehension
- Imminence

#### **Key authority:**

- Restatement (Second) of Torts § 21 (Am. L. Inst. 1965).

#### **Practice notes for law-enforcement misconduct context:**

- Even where no physical contact occurs, threats with present ability (e.g., aiming less-lethal weapons at close range) can support civil assault.
- Oregon civil assault should be pleaded as apprehension of imminent harmful or offensive contact; develop plaintiff-specific facts showing awareness, immediacy, and apparent ability rather than relying on generalized crowd fear.
- Because Oregon criminal assault terminology differs from civil tort usage, keep the tort formulation separate from criminal-code labels when drafting FTCA administrative claims or complaints.

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### **Battery**

Source of law: Common law; often framed through Restatement (Second) of Torts § 13.

**Core elements:**

- Intentional harmful or offensive contact
- Without consent or privilege

**Key authority:**

- Restatement (Second) of Torts § 13 (Am. L. Inst. 1965).
- ORS 12.110(1) (limitations period referencing assault and battery as actionable injuries).

**Practice notes for law-enforcement misconduct context:**

- Battery claims are commonly paired with negligence where plaintiffs allege both intentional and unreasonable uses of force. For chemical agents, describe exposure pathway and physical sequelae.
- For intentional crowd-control deployments, plead direct or indirect contact clearly: the projectile, gas, baton, dog, vehicle, or restraint is the contact, even if the officer did not touch plaintiff's body by hand.
- Privilege will be central. Include facts showing that the force was not justified by any arrest, dispersal, officer-safety, or crowd-management need, or that it continued after justification ended

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**False Imprisonment**

Source of law: Common law.

**Core elements:**

- Detention or restraint of plaintiff's freedom of movement
- Unlawfulness of the detention or restraint (lack of privilege)

**Key authority:**

- *Lukas v. J.C. Penney Co.*, 233 Or. 345, 353, 378 P.2d 717, 721 (1963) (intent to confine as core; unlawful restraint on freedom of movement).
- *Christ v. McDonald*, 152 Or. 494, 500-01, 52 P.2d 655, 657 (1936) (false imprisonment as unlawful restraint against will).
- *Pierson v. Multnomah County*, 301 Or. 48, 54, 718 P.2d 738, 742 (1986) (prima facie showing in misidentification context; cites Christ).

**Practice notes for law-enforcement misconduct context:**



- Confinement can be by physical barriers, force, or threats. In protest contexts, kettling and blocking egress can satisfy confinement if there is no reasonable escape route.
  - Oregon false-imprisonment claims turn heavily on privilege. Develop whether officers had legal authority, individualized suspicion or probable cause, and whether restraint exceeded the scope or duration of any lawful authority.
  - For protest kettling, map the perimeter, exits, warnings, timing, and whether people attempting to leave were blocked, threatened, arrested, or forced into a more dangerous route.
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## **IED**

Source of law: Common law.

### **Core elements:**

- Defendant intended to inflict severe emotional distress (or knew it was substantially certain)
- Defendant's acts were extraordinary/transcended bounds of socially tolerable conduct
- Conduct caused severe emotional distress

### **Key authority:**

- *McGanty v. Staudenraus*, 321 Or. 532, 535, 901 P.2d 841, 844 (1995) (elements; 'extraordinary transgression' standard).

### **Practice notes for law-enforcement misconduct context:**

- Oregon's 'extraordinary transgression' framing is demanding but can be met where state actors engage in targeted humiliation, threats, or retaliation beyond routine crowd-control.
  - Oregon courts evaluate context, relationship, and vulnerability; official authority, custody, immigration vulnerability, medical need, or isolation can make coercive conduct more extreme.
  - For law-enforcement facts, emphasize actions unrelated to legitimate enforcement goals: threats of gratuitous violence, humiliation, retaliatory targeting, family-separation threats, or deliberate indifference to obvious distress.
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## **NIED**

Source of law: Common law; Oregon generally requires invasion of a legally protected interest beyond pure emotional harm (unless specific relationships/contexts apply).

### **Core elements:**

- Negligence and causation
- Emotional distress must be connected to a legally protected interest or special relationship recognized by Oregon courts

### **Key authority:**

- *Curtis v. MRI Imaging Servs. II*, 327 Or. 9, 14-16, 956 P.2d 960, 963-64 (1998) (framework for emotional distress damages and legally protected interest).

### **Practice notes for law-enforcement misconduct context:**

- For protest claims, NIED may be strongest where there is physical injury or a recognized protected interest (bodily integrity, liberty). Otherwise, plead negligence with emotional-distress damages tied to physical impact or statutory/constitutional interests where applicable.
- In Oregon, do not frame the claim as free-standing emotional distress alone; tie distress to bodily integrity, liberty, property, statutory duties, custodial duties, or another legally protected interest.
- Where physical impact exists, plead it. Where it does not, articulate the protected interest with precision and explain why law-enforcement conduct invaded that interest.

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## **Wrongful Death**

Source of law: Statutory.

### **Core elements:**

- Death caused by wrongful act or omission
- Action brought by personal representative
- Damages as authorized by statute (including economic and noneconomic components; subject to statutory time limits)

### **Key authority:**

- Or. Rev. Stat. § 30.020 (wrongful death action; time limits and damages).

**Practice notes for law-enforcement misconduct context:**

- Also flag Oregon Tort Claims Act notice requirements for state defendants (ORS 30.275). While FTCA cases are federal, Oregon analogs may matter when considering joint tortfeasors and parallel state litigation.
- For FTCA analog work, Oregon wrongful-death damages should still be separated from survival/personal-injury theories where available; preserve proof of pre-death pain, medical expenses, and family losses.
- Check representative capacity early and avoid assuming that federal FTCA presentment automatically satisfies Oregon notice rules for any parallel state/local defendants

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**Conversion**

Source of law: Common law; Oregon Supreme Court adopts Restatement definition.

**Core elements:**

- Intentional exercise of dominion or control over a chattel
- Serious interference with another's right to control the chattel such that full value is owed

**Key authority:**

- *Hemstreet v. Spears*, 282 Or. 439, 444, 579 P.2d 229, 232 (1978) (adopting Restatement (Second) of Torts § 222A(1) definition of conversion).
- *In re Martin*, 328 Or. 177, 184, 970 P.2d 638, 642 (1998) (good-faith mistake not a defense to conversion).

**Practice notes for law-enforcement misconduct context:**

- Oregon uses the Restatement definition of conversion. Good-faith mistake is not a defense (*In re Martin*).
- For protest seizures, focus on intentional exercise of control and seriousness (destruction, refusal to return, wiping devices).
- Under the Restatement seriousness factors, destruction, long retention, refusal to return, data wiping, or transfer to another agency will generally be stronger than brief temporary custody with prompt return.
- In law-enforcement cases, plead why the interference exceeded any search, inventory, evidence-preservation, or forfeiture authority



## Abuse of Process

Source of law: Common law.

### Core elements:

- Use of legal process in proper form and with probable cause
- Ulterior purpose and perversion of process to accomplish an improper purpose

### Key authority:

- *Larsen v. Credit Bureau, Inc. of Ga.*, 279 Or. 405, 408-09, 568 P.2d 657, 659 (1977) (defining abuse of process; quoting *Kelly v. McBarron*, 258 Or. 149, 154, 482 P.2d 187 (1971)).

### Practice notes for law-enforcement misconduct context:

- More likely in retaliatory charging/subpoena scenarios than in use-of-force incidents.
- Oregon abuse of process generally assumes process valid in form but perverted to an improper collateral purpose; distinguish it from malicious prosecution, which attacks initiation without probable cause.
- Useful factual theories may include using subpoenas to identify organizers, warrants to seize unrelated expressive materials, or conditions of release to suppress lawful protest activity.

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## Malicious Prosecution

Source of law: Common law.

### Core elements:

- Defendant initiated a prosecution
- Malice
- Favorable termination
- Lack of probable cause
- Damages

### Key authority:

- *Hill v. Carlstrom*, 216 Or. 300, 304, 338 P.2d 645, 647 (1959) (essential elements are prosecution commenced against plaintiff by defendant, malice, favorable termination, lack of probable cause, and damages).

### Practice notes for law-enforcement misconduct context:



- Assess whether a prosecutor's independent decision breaks causation; plead facts showing officers' role in instigation (false reports, pressure, withholding exculpatory evidence).
- To connect officers to the prosecution, plead instigation facts: false arrest reports, fabricated observations, omitted exculpatory video, coordinated witness statements, or pressure on prosecutors.
- For protest charges resolved without trial, analyze whether the termination actually reflects innocence or lack of probable cause rather than compromise, diversion, or administrative convenience.