



A top-down view of various survival and outdoor gear items arranged on a dark, textured wooden surface. The items include a black hard-shell case in the top left, a red backpack in the top right, a grey knitted hat in the top center, a wicker basket in the center, a black digital thermometer in the middle left, a red and black flashlight in the middle left, a roll of white tape in the bottom left, yellow-handled scissors in the bottom left, two AA batteries in the bottom left, a bandage in the bottom left, a spiral-bound notebook in the bottom center, a pen in the bottom center, an orange whistle in the bottom center, a folding knife in the bottom center, a pink lighter in the bottom center, a small glass bottle in the bottom center, a silver metal container in the bottom center, a white plastic fork in the bottom center, and two clear plastic water bottles in the bottom right.

December 2019



Disaster Preparedness Manual and
Resource Guide
for
State Attorneys General



Disaster Preparedness Manual and Resource Guide for State Attorneys General

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Third Edition

December 2019



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Published by the National Attorneys General Training and Research Institute (NAGTRI). NAGTRI is the training and research arm of the National Association of Attorneys General, 1850 M Street, NW, 12th Floor, Washington, DC 20036, (202) 326-6000; <https://www.NAAG.org/>

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FOREWORD



As chief law enforcement officers, attorneys general face many challenges during and after disasters. We are regularly called upon to react in the heat of chaos, managing the many crises caused by nature's power or human's action. Preparedness is critical to increasing the efficiency and the effectiveness of response and safety.

From warnings to rescues and plans to recoveries, we are tasked with numerous responsibilities during emergency situations. My wish is this manual will be a helpful resource in better serving our constituents in their greatest times of need. I hope it better prepares us for the unexpected.

Since the publication of the first two versions of this manual in 2012 and 2015, attorneys general across the country have faced mass shootings, major hurricanes, huge floods, wild fires, cyber attacks, and other state calamities. Like them,

I have seen firsthand the damage that can be wrought by catastrophes. By sharing the lessons we have learned from dealing with emergencies, we can help others in the future.

Like the previous versions, this manual and resource guide is specifically designed to assist the state attorney general community in preparing for disasters of all kinds. It includes lessons learned from attorney general offices around the country.

It also contains summaries of key legal issues and an extremely in-depth preparedness checklist. Additionally, we have gathered templates and examples shared by attorney general offices that can function as useful guides to updating your office's response plans and resources.

As attorneys general, we oftentimes lead our communities in times of pandemonium. During these events, our constituents are dealing with some of the most trying and difficult struggles they will ever endure. I hope the information in this manual helps us to better serve them.

Sincerely,

A handwritten signature in black ink, reading "Jeff Landry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeff Landry
Louisiana Attorney General and 2018-2019 NAAG President

ACKNOWLEDGEMENTS

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Collaboration and cooperation are some of the core values that guide the National Association of Attorneys General. NAAG seeks the views and experiences of members and provides them with opportunities to share their knowledge, experiences, viewpoints, and insights with each other.

This manual could not exist without the contributions of the many attorney general staff who shared their experiences with disasters, offered best practices and lessons learned to aid their colleagues around the country, and conducted reviews of various drafts. We are grateful for their time and expertise.

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LESSONS LEARNED: ATTORNEY GENERAL OFFICES' EXPERIENCES WITH DISASTER RESPONSE AND RECOVERY

This section of the Disaster Preparedness Manual reflects states' experiences with a wide range of natural and manmade disasters, offering case studies, insights, and lessons learned from experienced practitioners in attorney general offices as they worked to respond to incidents and address a wide range of issues.

While attorney general offices are called into duty for a variety of emergency and recovery efforts, this section focuses primarily on examples of the ways offices in different states have addressed the core components of their work—consumer protection, victim services, communication, and ensuring continuity of critical operations.

NATURAL DISASTERS

Consumer Protection

After a multiple-vortex tornado struck Joplin, Missouri in 2011, the Missouri Attorney General's Office established an immediate presence, starting with a table at a temporary shelter. Two weeks later, the attorney general established an office at the Governor's Resource, Recovery, and Rebuilding Center, which was located in a small strip mall and brought together services from many state agencies. There, attorney general's office representatives took complaints and began investigations on issues from price gouging and home improvement scams to identity theft and charity fraud. The office focused in particular on facilitating problem resolution with mortgage providers, including servicing, attempts to obtain concessions, fee waivers, and loan modifications to forestall foreclosures. Staff also helped address citizen needs in a wide range of matters, including landlord-tenant issues, fraudulent towing activities, and referrals for everything from passport replacement to pro bono legal advice.

Handling consumer protection issues after an emergency requires specialized resources within the office of the attorney general, including:

- staff with the expertise to process and investigate complaints of fraud
- the ability to set up facilities near the site of a disaster, or, in the alternative, have operations in any area of the state depending on the impact of the disaster
- the ability to communicate and cooperate effectively with state and local government, federal government, disaster related task forces, and law enforcement
- the ability to interface with the media in order to keep the public informed
- the ability to establish a coordinated effort with private sector entities, such as gasoline suppliers or charity organizations, that might aid in identifying and deterring consumer fraud
- the creation of an active, accessible, and easy-to-use website with an integrated complaint system, as well as alternative methods for receipt of consumer complaints, including a disaster related phone line or email account
- a recordkeeping system sufficient to enable adequate prosecutions after the disaster has ended

Lessons Learned: Natural Disasters

Attorney general offices have addressed the following consumer protection challenges in the wake of natural disasters:

Price Gouging

After major flooding along the Missouri River and its tributaries led to the worst natural disaster in modern Nebraska history in March 2019, the attorney general's office faced a significant challenge—while the state had emergency declaration statutes, there was no price gouging statute tied to an emergency declaration. The office created a complaint form on its website, in part to “put businesses on notice that the state was watching out for consumers,” says Meghan Stoppel, Nebraska's Consumer Protection Division Chief.

Stoppel recommends that officials check the status of their state's price gouging statutes and whether they are tied to emergency declarations. In Texas, for example, state law prohibits selling necessities, such as drinking water, medicine, or fuel, at exorbitant or excessive prices after a state emergency has been declared.

Price gouging statutes also may require different levels of analysis of citizen complaints. In Florida, for example, investigators must consider a series of factors to identify “unconscionable” price changes. The attorney general's office created a smartphone app to supplement its existing consumer hotline and web complaint reporting. The app is designed to facilitate real time reporting that, importantly, asks citizens structured questions to generate detailed information investigators need to quickly identify possible unlawful conduct under Florida's price gouging statute (see case study, p. 3).

Other states have created consumer protection hotlines to handle price gouging and fraud complaint calls. After Hurricane Harvey hit the Gulf Coast in August 2017, the Texas Attorney General's Office created a hotline that operated beyond regular business hours and through the Labor Day weekend to field calls and encourage victims to send complaints with photos and copies of receipts to a dedicated email address. The office received more than 100 emails a day—a number which increased to between 700 and 800 emails a day when gas stations in Dallas increased gas prices after minimal amounts of rain in the hurricane's wake. The office ultimately reached over 60 price gouging settlements with a number of gas stations statewide.

CASE STUDY

‘No Scam’: Florida’s Smartphone App to Prevent Price Gouging

EVENT SUMMARY

Following Hurricane Andrew in 1992, the State of Florida enacted a law that prohibits price gouging during a declared state of emergency and creates avenues for the public to report businesses suspected of price gouging and fraudulent contractors.

SPECIFIC CHALLENGES

In the wake of recent major hurricanes—namely Matthew in 2016, Irma in 2017, and Michael in 2018—the Florida Attorney General’s Office was inundated with thousands of consumer reports of potential price gouging. Investigation of these reports was hindered by the lack of information consumers relayed when reporting suspected price gouging and fraudulent contractors. Some consumers also complained that the process for reporting was slow. The state’s reporting website was older and not optimized for mobile devices.

Determining the validity of each complaint is a fact-intensive and time-consuming process for the attorney general’s consumer protection division. Each complaint requires a review and analysis of specific facts related to pricing over the past 30 days, including whether the pricing reflects additional costs to the business arising from the storm event, industry and local market pricing trends, and other factors to identify possible “unconscionable” disparities in price.

THE RESPONSE

When Attorney General Ashley Moody took office in January 2019, her team went to work to improve the complaint process that was used during emergency declarations. The office implemented two key strategies: creating a smartphone app to streamline and enhance the reporting process and educating businesses about what constitutes price gouging during emergencies.

Ahead of the 2019 hurricane season, the attorney general’s office released the NO SCAM smartphone app, providing the public an avenue to submit price gouging complaints in real time. Available for both iPhones and Android devices, the free app walks users through a series of questions that identify price gouging as defined in the Florida statutes and are tailored to the specific commodity involved (such as gas, lumber, or hotel rooms). It also allows users to upload supporting documents such as photos and receipts. Together, the materials gathered through the app ensure that each complaint has detailed information needed for a successful response and investigation and deters unsupported “I think this price is too high” complaints.

Launched in June 2019, the app was downloaded more than 11,000 times in the first three months. The receipt of more complete information in real time during the 2019 storm season allowed investigators to successfully triage reports from consumers and respond far more quickly in the field, says Erica Geiger, Director of Special Projects and Initiatives in the Florida Attorney General’s Office. “We were able to identify egregious pricing and intervene to stop the unlawful conduct and get immediate results for consumers. We also used the information to track trends and contact corporations in real time to address patterns of complaints and other concerns. This resulted in educating businesses and fixing problems quickly before more people experienced price gouging,” she says.



Florida Attorney General Office’s No Scam App

KEY POINTS/LESSONS LEARNED

Consumer protection attorneys were involved in the development of the app.

The attorney general’s office worked with the app developer to create a mockup of each screen to ensure that the questions provided complete and specific details investigators needed for investigation.

The app itself was launched with press conferences in the state’s three biggest media markets to spark public interest. Local sheriff and police officials participated in the media events, and have since played a key role in promoting the app.

The next step? The app will be translated into Spanish for greater accessibility.

FOR MORE INFORMATION


- ▶ [RFQ for Price Gouging App](#)
- ▶ [NO SCAM one-pager](#)

Lessons Learned: Natural Disasters

Charitable Giving

Charitable organizations invariably arrive in the wake of natural disasters, bringing attorney general offices oversight and consumer education challenges that are only becoming more complex with today's private-party, crowdsourced solicitations for donations or financial support. For a list of pre- and post-disaster actions attorney general offices should consider implementing, see the Charity Checklist, Appendix, p. 61.

The New York Attorney General's Office used questionnaires, counseling, and, in a few cases, direct interventions to ensure that charitable funds were used appropriately in the wake of Hurricane Sandy (see case study, p. 5). In Nebraska, the attorney general's office reached out to organizations conducting private fundraising following the 2019 floods, including those using social media, to inform them of the office's charitable giving oversight and to set standards and expectations, said Stoppel. A letter sent to these groups stipulated that they should provide an assigned investigator itemized receipts and disbursements monthly until fundraising activities were completed. To educate consumers, the office developed a checklist and a page on its website to promote giving wisely and distinguishing between legitimate charities and scams (see below).



Donating with Care Checklist

- ☐ **Donate to reputable organizations** you are familiar with and those with a local presence.
- ☐ **Be cautious about fundraising efforts initiated on social media** with no known ties to an established organization or local charity.
- ☐ **Carefully evaluate the charity before making a donation.** Charity Navigator, GuideStar, IRS Select Check, the National Center for Charitable Statistics, and the BBB Wise Giving Alliance all provide information about established charities.
- ☐ **Designate the disaster** so you can ensure your funds are going to disaster relief, rather than a general fund.
- ☐ **Watch out for charities with names that sound similar** to well-known organizations.
- ☐ **Avoid cash donations** if possible and pay by credit card or write a check directly to the charity. Do not make checks payable to individuals or send money via money transfer.
- ☐ **Be especially wary of unsolicited emails that contain attachments** or links to websites, as they may download harmful malware onto your computer.
- ☐ **Be cautious when donating** to a recently-formed charity.
- ☐ **Contact the charity** to ask how your donation will be used for disaster relief.
- ☐ **Use peer-to-peer fundraising platforms carefully.**
- ☐ **Get permission and all the details before raising money on behalf of a charity or individual.**

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Nebraska's "Donating with Care" Checklist

CASE STUDY

Following Hurricane Sandy, Monitoring Charitable Contributions

EVENT SUMMARY

On October 29, 2012, Hurricane Sandy crashed into the East Coast with a vengeance. Over 150 Americans lost their lives to the storm. It incapacitated one of the busiest cities in the world for a week, flooded subway tunnels, displaced thousands of people, destroyed homes, schools, and businesses, and resulted in an estimated \$65 billion in property damage.

SPECIFIC CHALLENGES

Managing charitable groups presented a significant challenge in the wake of the storm. Scores of nonprofit organizations hastened to offer their help after Hurricane Sandy struck, raising hundreds of millions of dollars and providing major contributions to the relief efforts. But with so many players and so much money involved, the risk of mistakes, mismanagement, and abuse were high.

THE RESPONSE

The Charities Bureau of the New York Attorney General's Office is charged with ensuring that charities behave appropriately: that they use their gifts as intended by donors, and that their officers and directors heed fiduciary duties. In order to accomplish this goal, the Bureau needed information about the activities occurring within the state.

The Bureau developed a list, based on representations in the press or online, of 91 charities that claimed involvement in Hurricane Sandy relief work, and sent a questionnaire to each within weeks of the storm. The questionnaire was designed to be simple so it would cause minimal interference with organizations' recovery missions, while still providing essential information on who was operating, how much money (or goods) they were raising, and how they planned on distributing the donations.

After additional outreach by the Charities Bureau, nearly all of the organizations responded. Follow-up questionnaires were sent in March and April of 2013, and an online survey for additional updates was distributed in January 2014 (to which responses were received between February and April 2014). Based on the surveys, the attorney general's office released reports detailing the activities of charities in July 2013 and again in October 2014.

KEY POINTS/LESSONS LEARNED

Concerns were warranted, but many issues were explainable. Initial results from the questionnaire raised serious questions—not the least of which was that, six months after Hurricane Sandy devastated the New York City area, 42 percent of the funds charities had raised for relief remained unspent. This raised red flags for the members of the Charities Bureau.

Further investigation identified some of the reasons for the delays. In many cases, the cause was simply the sheer extent of the work to be done; recovery from a large-scale natural disaster is likely to span multiple years. Reimbursements from insurance companies and government programs take time to process, which slows down any projects dependent upon those resources. Likewise, some relief programs cannot begin until other groups have finished their own work. A nonprofit that provides furniture or appliances to families whose homes have been rebuilt, for instance, cannot distribute those goods until the reconstruction of those homes has been completed.

For some organizations, the outpouring of generosity simply exceeded their capacity to manage all the donations. Thirteen organizations reported fundraising totals from Hurricane Sandy that singlehandedly exceeded 50 percent of their total revenue for the fiscal period prior to the storm. Some groups were understaffed, failed to plan appropriately, or had not expected to deal with so much money. The Charities Bureau was able to provide guidance in these situations.

Ensure funds are used for their intended purpose. One finding revealed by the early rounds of questionnaires was that 17 organizations were considering using funds for purposes other than Hurricane Sandy relief. The Charities Bureau followed up with additional inquiries to those organizations, attempting to ensure that the many victims of Hurricane Sandy received the assistance that donors intended. As a result, all but four of the organizations in question devoted the entirety of their funds to Sandy relief, and those four were only permitted to repurpose funds that had not been restricted to Hurricane Sandy relief by donors.

Focus on underserved communities. The Bureau also found it necessary to give special focus to low income and minority communities. These neighborhoods were disproportionately impacted by the hurricane, in part because many of them contained structures that might not have complied with building codes. Immigrant communities were particularly disadvantaged, as some of their legal statutes made it extremely difficult to obtain aid from government agencies.

Intervention is necessary in some cases. The Charities Bureau intervened in four cases (including one case involving the organization which collected over half of the total funds raised for Hurricane Sandy relief), helping them to develop plans of action to address the challenges these organizations faced. By the end of October 2014—two years after the storm—91 percent of the funds had been spent, with timelines in place to distribute the remaining funds. In addition to the aid provided by state and federal government bodies, charities have distributed over \$600 million to the benefit of Hurricane Sandy's victims.

Lessons Learned: Natural Disasters

Contractors

Natural disasters also dramatically increase demand for contractors, and, in many cases, out-of-state contractors to meet the need. In the wake of disasters, there is a temptation to waive local or state laws in order to more quickly register or license contractors who can quickly begin debris removal and repair. However, some attorney general offices have argued that such waivers or special accommodations are inadvisable in the wake of a disaster, as local government, property owners, and the public are more likely to suffer financial injuries from unscrupulous contractors during the times of greatest need.


Following flooding in North Dakota in 2011, for example, state officials refused to waive consumer protection laws, instead opting to create a one-stop licensing center to address the need to license and vet contractors within the rapid timeframe needed (see case study, p. 7).

A 2011 Missouri law allowing insurance companies to better serve hard-hit areas and protect consumers against unscrupulous repair contractors is often cited as an exemplary way to address contractor fraud. **Missouri Senate Bill 101** prohibits exterior repair contractors, such as roofing and siding companies, from offering to pay a homeowner's insurance deductible in hopes of making a sale. It also forbids repair companies from negotiating with an insurance company on behalf of an insured homeowner.

Other attorney general offices seek to educate consumers about the warning signs of unscrupulous contractors, as illustrated by Nebraska's contractor checklist below.

Additionally, the dissemination of a standard or template contract for consumer use with contractors after an emergency ensures that consumers are aware of scams and have a written agreement about the terms of their service providers in case of fraud or nonfulfillment of promised work.

Another strategy for addressing the need for out-of-state contractors is through intra- and interstate mutual aid agreements in which different jurisdictions settle questions such as the portability of licenses across jurisdictional boundaries, the allocation of legal liability for damage during work by out-of-jurisdiction contractors and other licensed service providers, and issues surrounding worker's compensation for workers injured in a jurisdiction where they are not licensed. The **Emergency Management Assistance Compact (EMAC)** could potentially complicate this issue. However, if the state is a member of a mutual aid agreement that allows for the portability of licenses, the attorney general's office should publicize this fact in the same manner that it publicizes the general licensing requirement.



Contractor Checklist

- ☐ **Before allowing anyone to repair your damaged home, verify his or her credentials.** Check with the Nebraska Department of Labor to find out whether your contractor is properly registered. You can search the website or call 402-471-2239. Check with city officials to find out whether contractors must be licensed to perform specific work in your area.
- ☐ **Get a written estimate and sign a written contract.** Make sure it includes a description of the work, the materials included, when the work will be finished, the price, and the contractor's contact information. Read all contracts and make sure all the blanks are filled in before you sign. Keep a copy of the contract in a safe place.
- ☐ **Never sign any document or pay any contractor before verifying their license and/or registration.**
- ☐ **Negotiate a reasonable down payment,** and only pay in full when the work is done to your satisfaction.
- ☐ **Get at least three written estimates** and make sure each contractor bids on exactly the same work. Talk with your neighbors about what they are paying for similar work.
- ☐ **Pay by check or credit card and keep all receipts.**
- ☐ **Ask contractors for references** and, if possible, call previous clients.
- ☐ **If possible, write down the contractor's vehicle information** (make, model, and license plate) and their driver's license number.
- ☐ **Verify all claims made about insurance coverage with your insurance company.**
- ☐ **You have the right to cancel a contract within three days** if you signed it at your home or at a contractor's temporary location, like a convention center or restaurant.

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Nebraska's "Contractor Checklist"

CASE STUDY

North Dakota's One-Stop Licensing Center for Contractors

EVENT SUMMARY

Flooding along the Souris River in June 2011 affected about 11,000 residents in Minot, Burlington, Velva, and several rural areas across the state. More than 4,000 homes were damaged by floodwaters.

SPECIFIC CHALLENGES

Along with the ever-present threat of fraudulent contractors, the North Dakota Attorney General's Office saw an influx of out-of-state contractors. Many of these "storm chaser" contractors misrepresent their true business reputations and skill levels. They may even obtain temporary office locations in the affected state so they can advertise as a "local" business.

The attorney general's office felt there needed to be a uniform way to vet and identify all contractors to ensure that they were licensed, paid taxes and fees, had liability insurance to protect property owners, and had workforce safety insurance to protect injured workers. The attorney general's office sought to help ensure a level local playing field and protect citizens.

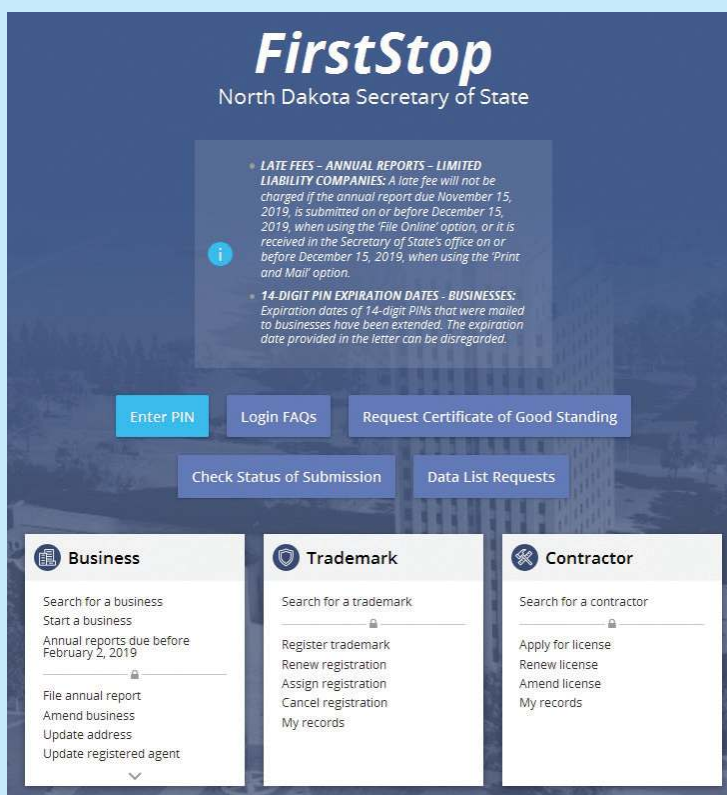
THE RESPONSE

The Office of Attorney General Wayne Stenehjem, in cooperation with the Secretary of State and the North Dakota Division of Emergency Services, immediately began to organize and mobilize a One-Stop Contractor Licensing Center in Minot, North Dakota, where several neighborhoods had been evacuated.

The intent was to streamline city and state government regulatory and licensing functions in order to efficiently and effectively register, license, and regulate as many contractors and flood repair-related businesses as possible. Hundreds of contractors were lined up outside the doors on opening day and for many days thereafter.

Once the contractors were registered, the state's Bureau of Criminal Investigation conducted more than 4,400 criminal history background checks on contractors—primarily to identify registered sex offenders and outstanding criminal arrest warrants, ultimately holding 23 people on outstanding warrants. Upon completion of the background checks, all contractors and their employees were issued photo identification to be displayed when entering or working in flood-damaged areas. Individuals without the photo ID cards and who were not licensed were subject to arrest. Many individuals never returned to complete the licensing process after completing the criminal history background authorization, which enhanced public safety during the recovery process.

The Center operated for nine weeks, issuing 4,094 licenses to businesses and employees and registering 505 contractors. Many contractors commented during the licensing process that they appreciated the professional and efficient manner in which they were licensed. They recognized that the if the same process had been undertaken by separate agencies, most located in the state capitol of Bismarck, it would have required days or weeks to complete.



"FirstStop" North Dakota's One Stop Licensing Center

Contractor Search

Search by name or system id (###-#####)



Advanced ▼

Results: 100

Form Info	SOS Control ID#	Status	Standing	Filing Date
BCH BUILDERS, LLC Class A - 38210	0002168246	Active	Good Standing	08/24/2009
BRAATEN PLUMBING, INC. Class B - 38747	0002167884	Active	Good Standing	02/04/2010
BRAATEN PROPERTIES, INC. Class C - 40262	0002164900	Active	Good Standing	11/23/2010
BRACE INTEGRATED SERVICES, INC. Class A - 51788	0002179862	Active	Good Standing	09/23/2014
BRAD AMB CONSTRUCTION Class D - 24575	0002158015	Active	Good Standing	03/31/1997
BRAD BISHOP CONST. Class B - 40994	0002171034	Active	Good Standing	04/15/2011
BRAD BONNET CONTRACTING, INC. Class D - 37677	0002168104	Active	Good Standing	05/04/2009
BRAD PAUL ENTERPRISES, INC. Class A - 21166	0002154986	Active	Good Standing	06/12/1992
BRAD PAUS CONSTRUCTION Class B - 37981	0002166821	Active	Good Standing	11/01/2007
BRADEN SHIELDING SYSTEMS CONSTRUCTION, INC. Class A - 52596	0002180302	Active	Good Standing	02/13/2015
BRADEN WENAAS CONSTRUCTION Class D - 56935	0002183390	Active	Good Standing	06/06/2017

Contractor Search for “FirstStop” licensing center

KEY POINTS/LESSONS LEARNED

Speed matters. Within the first week of evacuation, the North Dakota Attorney General’s Office coordinated planning meetings with agencies during which they coordinated forms, processes, checklists, and procedures for the Center. The attorney general’s office and other state agencies quickly pulled together information technology, equipment, and personnel to stage and staff the Center, which opened just weeks after the flooding—just in time for the influx of out-of-state contractors.

Coordination with other agencies was critical. Among the state agencies involved:

- ▶ The attorney general office’s consumer protection division handled the transient merchant and contractor registration and compliance, while its licensing section processed transient merchant license applications.
- ▶ The Bureau of Criminal Investigation conducted criminal history background checks, as described above.
- ▶ Job Service North Dakota managed the statutory requirement that employers provide unemployment insurance coverage for workers if they met certain criteria.
- ▶ Workforce Safety & Insurance managed the requirement to secure workers’ compensation insurance for full-time, part-time, and seasonal employees prior to hiring.
- ▶ The Secretary of State handled contractor registration.
- ▶ The Tax Department addressed registration issues.
- ▶ The North Dakota Army National Guard worked with local law enforcement to control access to closed neighborhoods, a process which the photo IDs helped facilitate.

Local government played a critical role. The City of Minot enforced its local contractor requirements and building permits. The city also required photo IDs for employees of all contractors—even local companies that had previously been registered. The IDs played a crucial role in controlling access to evacuated neighborhoods during the recovery process. Local law enforcement also could be used to improve crowd control at the site, which could be swarmed with hundreds at contractors at once, some of whom suddenly learned they were not allowed to work, North Dakota officials said.

The attorney general’s office coordinated with city officials and local law enforcement to conduct random inspections of job sites. Inspections included compliance with state transient merchant and contractor licensing requirements, as well as proper registration with the tax, job service, and workforce safety agencies. Noncompliant contractors had their job sites shut down immediately and were assessed fines and penalties.

The public was kept apprised of approved contractors. The attorney general’s press office posted a list of contractors licensed through the Center and updated it daily. It also informed residents in advance, through a news conference and press releases, that there could be scams and that the office was involved in creating a solution by establishing the Center.

A simplified state license application or registration form created specifically for emergency situations could help streamline what is an otherwise lengthy process. The attorney general’s office and other state agency officials also must determine what information can be excluded or provided within a set timeframe, e.g. 30 days, in order to expedite the process.

It may be helpful to schedule specific times for local licensed contractors. Those contractors may only need to complete certain steps, such as obtaining photo IDs for employees.

LEGAL ISSUES

Determine whether the relevant agencies and/or local officials have the authority to require photo ID cards and licenses. Enact state laws to allow state agencies access to criminal history background checks for non-criminal justice purposes (i.e., emergency circumstances or for public safety concerns—specifically out-of-state information).

EQUIPMENT NEEDED

- ▶ Telephone lines
- ▶ Internet access
- ▶ Telephones
- ▶ Fax machines
- ▶ Remote access to state IT systems
- ▶ Fingerprint scanner
- ▶ Printers for ID cards
- ▶ Laptops
- ▶ Signs
- ▶ Office furniture including chairs and tables
- ▶ Office supplies including notepads and pens
- ▶ Food for staff

General Consumer Protection Law Violations and Fraud

The attorney general's office also can use state consumer protection and general fraud statutes as a tool in its consumer protection role. General consumer frauds during a disaster could include anything from misrepresentations regarding a product commonly used during a disaster requiring an additional charge to consumers purchasing a product using a credit card versus cash. Additionally, the type of disaster event will impact the potential fraud. For instance, with disasters involving hurricanes or flooding, states should be aware of the potential for fraud in the used car industry, specifically the sale of flood damaged cars. In contrast, when disasters involve severe winter weather, states should be aware of energy related fraud, including hidden fees or finance charges by propane and other energy-related suppliers.

In every situation, ensuring that the office's consumer protection efforts are highly visible following a disaster can provide a deterrent effect, alert consumers to the dangers of fraud, and, while protecting legitimate businesses, increase the likelihood that consumers will report instances of fraud.

Communication

Public outreach is critical before, during, and throughout the recovery process of natural disasters to ensure that citizens and businesses are aware of statutes governing price gouging and other deceptive practices. Attorney general offices use a combination of traditional media outreach, social media, and other tactics to ensure that their message gets out.



**Louisiana Attorney General Jeff Landry at February 9, 2018 Press Conference—
Advocate Staff photo by Leslie West Brook**

Disaster Communication: Before, During and After

Millard Mulé, communications director for Louisiana Attorney General Jeff Landry, offers these tips for effective communication throughout a natural disaster and recovery efforts.

Before

Know your local, state, and federal partners before an emergency. Get and maintain contact information for police chiefs, sheriffs, U.S. attorneys, and FBI Special Agents in Charge. Have outreach representatives and field staffers regularly visit county emergency operations centers. Ensure public information officers from these agencies know the best way to contact each other and that you have alternate ways of getting in touch with them. Don't be afraid to tap into their connections to help you.

Preparation is key. Create brochures, posters, and social media posts in advance. Pre-draft templates for news releases. Follow federal agencies on social media (FEMA, NWS, NHC, etc.). Also ensure you have a “go kit” so you can easily integrate into a command post. The kit could include essentials such as a laptop/tablet; extra phone chargers; media distribution lists; press release templates; wireless connectivity (SIM card or hotspot); external hard drive; camera; and notebooks.

Conduct trainings ahead of time. Try to do media training with your executives before a disaster strikes. The head of the agency may not always be available, and someone's first time in front of the camera should not be during a crisis.

Ensure IT personnel are prepared. Make sure IT personnel can set up an infrastructure to handle large amounts of tips, emails, and videos.

Educate citizens. Deliver educational materials to Emergency Operation Centers and post them on social media.

During

Educate your constituents. Retweet and share safety tips and verifiable posts from statewide partners.

Stay in your lane, no matter the temptation to do more.

Put the victims first and don't speculate on the performance of other agencies. Understand your roles, obligations, and limitations. Be a team player, and don't allow politics or egos to create unforced errors.

Maintain communication with office personnel. Create a plan for all scenarios—including no email, no text, and no phone. Designate backup public information officers (PIOs) in case the primary officer is impacted and unavailable. Update the employee hotline voicemail regularly.

Prioritize public safety—being accurate is more important than being first. Carefully check and re-check all facts. If an error or mistake is made, correct it as soon as it is discovered.

After

Educate your constituents. Produce public service announcements, create social media campaigns, and hold press conferences. Retweet and share verifiable posts from local law enforcement organizations and news outlets.

Don't overlook small but significant steps. Express concern and sympathy for all victims. Properly vet all interview requests. If it will not jeopardize public safety, visit affected areas or disaster shelters.

Utilize the National Center for Disaster Fraud (www.justice.gov/disaster-fraud). The NCDF is a centralized 24/7 clearinghouse for disaster fraud complaints and information relating to both natural and manmade disasters. Direct constituents to the Disaster Fraud Hotline at 866-720-5721.

Maintain coordination with partners, including PIOs from other agencies.

Answer public record requests.

As the Gulf Coast awaited the landfall of Hurricane Harvey in 2017, the Texas Attorney General's Office issued a press release warning of steep fines for price gouging. Staff communicated the agency's zero-tolerance stance in more than 40 local television, cable news, and radio interviews before, during, and after the hurricane. Interviews included a simple, intentionally repetitive message: "Be prepared. Don't get taken." Media outreach resulted in more than 6,000 reports of gouging via email or calls to the consumer complaint hotline.

In Nebraska, the attorney general's office created a series of alerts and public service announcements for radio stations to broadcast, focusing on working with contractors and donating wisely to charitable causes. The Nebraska Attorney General's social media accounts also directed citizens to a special section of its website featuring its checklists on charities and contractors.



Doug Peterson ✓
@AGDougPeterson

Follow

Reminding Nebraskans to donate with care and avoid charity scams in response to recent weather damage & flooding: bit.ly/2FIdFh7
[#NebraskaStrong](#)



Press release posted to social media by
Attorney General Doug Peterson



Louisiana Attorney General Office PSA on
flood-damaged vehicles

Florida's Office of the Attorney General issued its own hurricane preparedness guide, a 14-page document featuring both general preparation advice and information about threats after the storm, including scams and price gouging.

In Louisiana, the attorney general's office provided a wide range of public communications following flooding in the state, including informational graphics about charitable donations, contractor scams, and the warning signs of flood-damaged cars.

It's also important to send messages to businesses about their responsibilities in the wake of disasters. In Florida, Attorney General Ashley Moody spoke to industry groups to outline the general parameters of what constitutes price gouging, and invited business representatives to discuss the issue from their perspective.

Continuity of Operations

Natural disasters often can cause significant disruption to attorney general's offices at the times they are needed the most.

"Assume Mother Nature & Murphy's law [will] collude," says South Carolina Deputy Attorney General Barry J. Bernstein. "Plan for your office to be displaced and that resources will be poor."

Many of the issues in the checklist provided in this manual address preparations to ensure continuity of operations following natural disasters. Based on his experiences with the tornado that hit Jefferson City in May 2019 as part of a prolonged series of destructive tornadoes across the Midwest, Missouri Office of the Attorney General Policy Adviser Wyatt Suling offered the following suggestions to keep offices operating:

- Invest in IT infrastructure that allows staff to work remotely in an effective and secure manner. Examples include transitioning all staff to laptop computers, setting up a virtual private network (VPN) for secure connections, making office-wide contact information available on employees' mobile devices, and providing mobile hotspot capability. Doing so provides flexibility in staff work schedules during normal operations, but in the event attorney general office facilities become inaccessible, staff are already equipped to seamlessly continue operations.
- Back up office data to a remote location unlikely to be impacted by an event affecting the primary data center. The Missouri Attorney General's Office backs up all office data to a secondary data center located more than 130 miles away from the primary data center on a daily basis.
- Ensure that staff understand their responsibilities and tasks during emergency operations ahead of time by developing and training on a continuity of operations plan.
- Identify contingency facilities in the event attorney general office facilities are inaccessible. The contingency facilities should be unlikely to be impacted by the same event affecting the primary office location.
- Develop contingency planning for all office locations if the office has multiple locations.

It's also critical to think through the continuity of judicial operations, including jails and courts that fall under the office's purview. Louisiana officials were particularly tested after Hurricane Katrina flooded prisons and courthouses in 2005. The attorney general's office's investigation and criminal divisions had never been requested to assist in law enforcement or criminal justice matters with any issues related to a disaster prior to Hurricane Katrina. The flooding in the hurricane's wake required the offices to plan and execute the emergency evacuation of prisoners and personnel from the Orleans Parish jail and salvage damaged and destroyed evidence at the parish courthouse. Among the lessons learned from the experience:

- Back up all criminal and civil files electronically to a location far from the possible affected area.
- Store evidence at a location that is built to withstand a storm or disaster.

In Texas, local law enforcement helped backfill attorney general office personnel by sending officers to staff jails in the wake of 2017's Hurricane Harvey. The state also enacted a law (TX SB 418.193) relating to legal counsel provided by the attorney general to localities subject to a declared state of disaster to help address decisions about moving prisoners to other counties and other issues when local attorneys and judges are unavailable.

In South Carolina, after a courthouse was condemned, office staff used a warehouse in North Charleston as a temporary replacement, with facilities at Clemson University as a potential backup. Colleges and universities could play a similar role in many places, Bernstein says. It's also important to focus on ensuring continuity of services such as couriers and deliveries that impact court proceedings. And since the National Guard plays a critical role in emergency management and recovery operations, it's vital to establish relationships with their Judge Advocate General (JAG) staff before issues arise during response and recovery, says Bernstein.

Attorney general offices also must consider their impact on other agencies and recovery operations. In particular, Bernstein says that offices should provide the statewide emergency operations center with printed copies of attorney general opinions on emergency operations. "In such an emergency, access to opinions from an attorney general server or website may be unavailable due to communications loss, hard copies of these documents will save delays or misinterpretations at crucial periods of time," Bernstein says.

Following flooding in Nebraska, the attorney general's office implemented flexible schedules for employees to help limit congestion on highways, which were already strained as a result of road closures throughout the state, said Stoppel. Texas closed offices so more people were available where needed. The office also created paper cards with contact information of attorney general senior staff and other state operation center and first responder agency officials to foster communications when there was limited access to computers and other reference materials.

Offices also must track resources expended towards recovery efforts, particularly when disaster declarations make federal assistance available. In the wake of Hurricane Katrina, the Mississippi Attorney General's Office accounting division took the lead in tracking the resources the office expended towards recovery efforts. The office had already been using a system of codes in their billing practices to allocate the billed hours to the correct state agency. Immediately after Hurricane Katrina hit, the accounting department set up a separate organizing code especially for hurricane related work and purchases. Anyone who did work related to the disaster used that code to tag their activities, and any purchases made by the offices had invoices bearing that code. The codes put in place once Hurricane Katrina hit were just an extension of the already existing system, which helped to ensure immediate, universal, and proper use by all employees at the office.

Coordination with Federal Partners

It is important that attorney general offices be prepared to coordinate with federal partners after disaster strikes. Mulé recommends developing relationships with the U.S. attorneys and FBI Special Agents in Charge in the state.

Offices also may need to provide advice on coordinating disaster response activities with federal agencies. For example, following a crippling mudslide outside the small town of Oso, Washington, in March 2014 which resulted in the loss of more than 40 lives, state officials faced obstacles in the organizational structure of federal disaster response teams. Because of FEMA policy limiting the deployment of urban search-and-rescue task forces unless in-state rescue units are unavailable, the state had to act quickly to deploy the Washington task force under state authority (and at state expense) before FEMA would divert additional teams to provide assistance. The state entered into an agreement with the local government responsible for the task force in order to deploy the squad to Oso at state expense. That deployment was then used to verify to FEMA that the state asset was unavailable for use, releasing FEMA to deploy additional task forces from other locations.

Finally, taking care of staff is critical—they are often victims as well, and are experiencing significant stressors. Following flooding in North Dakota, state attorney general office staff had to travel from Bismarck to Minot daily, as there was no lodging available—as much as a two-hour commute each way. It is important to obtain local commitment for hotel rooms in advance of emergencies whenever possible. Even when lodging is available, staff often works 12 to 15-hour days following a disaster, meaning it may be necessary to pull someone from an already skeleton staff at the attorney general’s headquarters to have them replace exhausted workers in the field.

“Human resources must be at the table,” said Texas Deputy Attorney General Jeff Hillery, as personnel issues and questions will rise to the forefront during a natural disaster or other mass casualty incident.

MANMADE DISASTERS

In the wake of manmade disasters ranging from mass shootings and civil unrest to accidental spills or structure collapses, attorney general offices play many critical roles, including investigation and coordinating a wide range of services for victims.

The 2017 mass shooting in Las Vegas, which left nearly 60 dead and hundreds more injured, represented an unprecedented need for investigative and victim advocacy resources. In response, the Nevada Attorney General's Office, with the assistance of the National Association of Attorneys General (NAAG), launched a coalition of attorney general offices from around the country to bring additional victim advocates and other support to Las Vegas. While the Nevada Attorney General's Office faced many challenges, the two most critical needs were met by solutions developed from other mass casualty situations and victim advocates.

Within the first few weeks after the Oct. 1 shooting, the Nevada Attorney General's Office was overwhelmed with offers of volunteers and resources from other attorney general offices, including the services of victim advocates to assist survivors and family members (see case study, p. 18). "I am deeply moved knowing that in times like this, the entire country stands with the city of Las Vegas and the State of Nevada," then-Attorney General Adam Paul Laxalt said in a press release.

NAAG played a critical role marshalling resources in the weeks that followed, circulating messages about new designated points of contact and other information to all attorneys general on behalf of Nevada. It also convened a working group of practitioners from offices around the country to develop a Mass Violence Checklist (see appendix p. 61), which has since been used by offices in subsequent mass violence incidents.

Along with response and victim advocacy, attorney general offices also play critical roles in navigating a host of complex legal issues before and after incidents, as was the case following protest events in Charlottesville, Virginia, in 2017 which left three people dead (see case study, on page 16).

CASE STUDY

Addressing the ‘Perfect Storm’ in Charlottesville

EVENT SUMMARY

After a series of protest events involving hundreds of white supremacists and counter-protesters in Charlottesville, Virginia, culminated in state and local declarations of emergency and the deaths of two state troopers and one protestor in August 2017, Gov. Terry McAuliffe convened a task force to review the events, review and make recommendations about state and local permitting processes, and determine the state’s preparedness to respond to civil unrest.

SPECIFIC CHALLENGES

Both the state task force and an independent review of events commissioned by the City of Charlottesville identified key issues with communication and coordination between city and state officials as Charlottesville leaders weighed issues involving free speech and public safety in planning for the events. Deputy Attorney General Victoria Pearson characterized these challenges as a “perfect storm.” Virginia law also prohibits localities from restricting the possession or carrying of firearms and ammunition, and many of the protesters were armed.

THE RESPONSE

Pearson was a member of the governor’s after-action task force, which ultimately issued a series of recommendations involving permitting, collaboration and information sharing, response using a unified command strategy, training, and other issues. The attorney general’s office also provided immediate advice to the governor’s office on a host of related legal issues.

KEY POINTS/LESSONS LEARNED

Make sure local jurisdictions have a strong permitting process—and work with them to understand legal issues. The governor’s task force identified that many Virginia localities lacked special event permitting processes, and those that did often lacked provisions for First Amendment activities such as protests and counter-protests.

The process of incorporating state and local resources for a unified effort in Charlottesville was not clearly defined, according to the after-action reviews, and the state task force provided recommendations for

“implementing a robust permitting process for special events.” Pearson also mentioned the importance of identifying and being able to relocate planned activities to appropriate locations for events of this nature to ensure public safety efforts, as a possible issue which complicated planning and response in Charlottesville.

The independent review conducted for the City of Charlottesville also recommended that the Virginia Office of the Attorney General provide guidance on relevant state and federal law on policing First Amendment activities to towns and cities in Virginia. “If you have large-scale events which involve state resources, it is good to take initiative with the municipality to collaborate early in the process,” advises Pearson. “Later, it becomes everybody’s problem.”

Work with partners. The Georgetown Institute for Constitutional Advocacy and Protection reached out to the attorney general’s office to see if it could assist with training going forward. The organization also ultimately supported critical consent decrees signed in 2018 that resulted in barring event organizers and militias, radical organizations, and their leaders from participating in city protests and rallies “as unauthorized organized armed groups using force or projecting the ability to do so.” The consent decrees and a state court opinion provide “important precedent on which other jurisdictions can rely to prevent violence at public protests and rallies,” according to a summary from ICAP.

FOIA considerations. The attorney general’s office continues to fight to exempt the operations plan from FOIA requests under the tactical exemption.

FOR MORE INFORMATION

- ▶ **Governor’s Task Force Report**
- ▶ **Permitting reference document**
- ▶ **Independent Review of the 2017 Protest Events** (Heaphy Report)
- ▶ **ICAP Summary of Consent Decree**
- ▶ **CAP Prohibiting Private Armies at Public Rallies**

Victim Services

After two homemade bombs detonated near the finish line of the Boston Marathon in April 2013, killing three people and injuring several hundred others, the FBI Victim Assistance Program, Massachusetts Office for Victim Assistance, Red Cross, and the City of Boston provided an immediate response and established a Family Assistance Center (FAC) to provide resources to victims at one location. The Massachusetts Attorney's General Office Victim Services Division provided staff support at the FAC from their Victim Witness Assistance Division and their Victim Compensation & Assistance Division staff.

The strong, established victim service relationships, including local, state, federal, and community victim service programs, were essential in the smooth coordination of a rapid response, resources, services to victims, and communication throughout the Marathon Bombing victim services response.

Nikki Antonucci, chief of the Massachusetts victim witness services division, stresses the importance of building and maintaining strong relationships before such tragedies occur. "The victim assistance world is often small," she says, noting that staff from different agencies including law enforcement victim advocates, prosecutor advocates, and community-based victim advocates often know one another. Antonucci recommends building on current relationships and identifying personnel and programs statewide with extensive experience in assisting survivors of trauma, homicides, and crisis response.



Then-Nevada Attorney General Adam Paul Laxalt with staff and volunteers during the response to the October 1, 2017 Las Vegas shooting. Provided by Nevada Office of the Attorney General

CASE STUDY

Rapid Response Following the Las Vegas Mass Shooting

EVENT SUMMARY

The Route 91 Harvest Festival mass shooting claimed the lives of 58 people and injured hundreds more during an open-air concert held on the Las Vegas strip on October 1, 2017.

SPECIFIC CHALLENGES

The sheer number of victims required a massive—and immediate—response. Virtually the entire investigations division of the attorney general’s office helped the unified emergency operations center gather personal effects—six full box truckloads—and support other law enforcement agencies during investigation and recovery operations in what was “the most horrific crime scene most in law enforcement had ever seen,” said Rod Swanson, chief of investigations. Victim services posed the next challenge, with nearly 1,000 individuals directly impacted by the shootings.

THE RESPONSE

With the assistance of the National Association of Attorneys General, Nevada Attorney General Adam Paul Laxalt launched a coalition of attorney general offices from around the country to ensure the state had adequate victim advocates and other support. Ultimately, many states responded with personnel and other resources.

As victim advocates came into the state—as many as 40 at a time from California, for example—the office coordinated with peers to create a Family Assistance Center. Located in the Las Vegas Convention Center, the center offered one-stop service for survivors, families of the deceased, concertgoers, and members of the Las Vegas community who were affected by the shooting. In the first two weeks following the incident, more than 1,600 individuals received personal effects and a variety of services, including crisis counseling, lodging assistance, travel and transportation assistance, property recovery, victim compensation, legal services, spiritual care, consulate services, onsite childcare, and additional administrative support for state agencies, among others.

The Nevada Attorney General’s Office also worked to allocate \$600,000 in funds from a deceptive trade settlement to supplement federal funding for overtime payment for law enforcement workers.

KEY POINTS/LESSONS LEARNED

Focus on supporting personnel on the scene. The attorney general office ensured that investigative staff and others who volunteered to assist on site during recovery operations had access to employee assistance programs, comfort dogs, and other supports. The office also presented all volunteers with an award and used some settlement funds to support overtime and other needs. “Keep talking to your people—check their attitude, hydration, and mental state,” Swanson said. “You are there serving victims, but you need to go in with the attitude that you have to take care of your people.”

Ensure that only those trained in crisis situations work with victims. Despite the outpouring of support, it’s important that only volunteers with experience dealing with trauma and homicide work with victims—and not just for the wellbeing of the victims, says Kirstin Flores, director of the Arizona Attorney General Office of victim services. “If you send someone not trained in crisis, they come back severely traumatized,” she says.

Consider needs when coordinating a multistate effort. Staff recommend having a direct contact in each victim advocate office and being as specific as possible about their needs when making requests, such as for victim compensation and victim witness experts. State and national organizations also should identify staff with expertise in these areas and those with experience in areas such as homicide and trauma, says Nikki Antonucci of the Massachusetts Attorney General’s Office.

Strengthen regional relationships. Flores recommends fostering regional relationships through quarterly conference calls and identifying specialized resources that can be marshaled following incidents, including Spanish and other foreign language speakers, and advocate and comfort dogs.

Consider developing a virtual assistance center in advance of an incident, with templated resources involving victims’ rights and other resources that can be published quickly as response shifts to recovery.

Victim Compensation

While it falls under the broader victim services umbrella, victim compensation is a complicated—and potentially contentious—issue requiring specialized staff and other resources. Along with emphasizing transparency and making outreach efforts to ensure that all victims and their families have access to the compensation process, a number of states also have brought in outside specialists to provide both expertise and transparency, as was the case in Indiana following an accident during the 2011 State Fair.



Attorney general staff with support animal during the response to the October 1, 2017 Las Vegas shooting. Provided by Nevada Office of the Attorney General

CASE STUDY

In Indiana, Ensuring Equitable Access to Tort Claims Following the 2011 State Fair Tragedy

EVENT SUMMARY

When a strong gust of wind struck the grandstand of the Indiana State Fair in August 2011, seven people died and many more were injured when stage rigging toppled into the crowd.

SPECIFIC CHALLENGES

State law limited tort claims at \$5 million per incident, with the stage collapse counting as a single incident under the statute. Attorney General Greg Zoeller announced within 18 days of the tragedy that he would find a way to distribute the full amount and provide immediate relief to those who needed it most.

THE RESPONSE

The attorney general's office assigned a tort litigator to the site the morning after the incident, hired an engineering firm on behalf of the attorney general, and coordinated with the governor's office on assigning separate counsel to the state fair director. It also hired an outside claims adjuster to begin managing tort claims and collecting medical bills, and internally coordinated an expedited tort claim process including customized forms.

Out of the 65 people submitting claims, 64 accepted the state's offer. The rejected offer of \$1,691 was redistributed to the other 64 claimants, minimally increasing the final amounts to the other claimants.

KEY POINTS/LESSONS LEARNED

The protocol was developed with high-profile outside assistance, which provided both expertise and credibility. At the request of Governor Mitch Daniels and Attorney General Zoeller, Kenneth Feinberg, nationally recognized for his role as Special Master of the 9/11 Victim's Compensation Fund, agreed to assist the state in finding a distribution protocol for both a relief fund made up of private donations and the state's tort claim fund. Feinberg's involvement in helping develop a distribution protocol provided credibility to the process and provided a starting point for analysts before making final distribution decisions.

Mediation played an important role. While the attorney general coordinated internally on the logistics of getting information out to those injured in the incident, the tort litigators entered into mediation with the plaintiff's lawyers representing the more than 60 physically injured or deceased individuals and a defendants' group consisting of many of the possible defendants that had been named in early lawsuits. The mediation cost was split three ways among the plaintiffs, the state, and the defendants or their insurance companies. Discussions occurred through mediation which allowed them to be kept confidential.

Communication focused on ensuring access to the filing process. The state's claim process followed an expedited timeline and public information was coordinated to ensure all injured could easily file a claim with or without an attorney. In order to ensure that information regarding the claims process was thoroughly disseminated, local media and a public website were used.

The expedited process prioritized claims. It was determined that only those that suffered a physical injury would be compensated and medical bills were to be submitted to the claims adjuster within a specified period of time. Under the compensation protocol Feinberg helped design, the estates of the seven deceased victims were guaranteed settlements of at least \$300,000 each. One victim who suffered permanent paralysis received a \$500,000 settlement. Another 58 claimants who were most seriously injured and met at least one other protocol criteria were offered payments equal to approximately 65 percent of their medical and hospital bills submitted to date. That amount exhausted the rest of the \$5 million the state had available, and claimants with non-physical injuries or property damage claims did not receive settlement offers under the protocol.

Efforts were made to prevent fraud. There were two claims held back for payment until criminal charges are resolved against two individuals who allegedly filed false claims. The attorney general worked with local law enforcement in the arrest of the individuals at pre-arranged meetings purposely devised for them to sign for receipt of their checks.

Consumer Protection

As with natural disasters, attorney general offices must ensure that charitable efforts following manmade incidents are legitimate and that organizations and individuals distribute money and other resources raised in appropriate ways. “One important lesson, learned by other states visited by tragedy or natural disasters, is that people are compassionate and they respond quickly and generously,” Connecticut Attorney General George Jepsen **said** during a 2013 policy conference on state charities regulation. “In fact, the immediacy and volume of gifts that pour in from all over the world in the wake of a disaster can be overwhelming... In such an environment, attorneys general acting as protectors of disaster gifts cannot monitor every action and prevent waste and delay that erodes public confidence in charitable response to disasters. However, we can judiciously leverage our power to lead or facilitate collaborative efforts.”

In recent years, those collaborative efforts have shifted. Following the Boston Marathon bombing in 2013, local leaders decided not to channel funds for survivors and victim families through an existing foundation, in part due to the challenges faced following the Sandy Hook tragedy (see case study, p. 23). Instead, they created a new nonprofit, One Fund Boston, within 24 hours of the bombing. The fund ultimately raised \$80 million from more than 200,000 donors, which was distributed to the 260 wounded, families of those killed, and others who claimed to have suffered post-traumatic stress syndrome or financial losses in the bombing’s wake.

Despite the rapid creation and high visibility of One Fund Boston, many more charities, including potential scams, popped up even more quickly. The attorney general’s office received reports that, within four hours of the bombing, more than 125 internet domain names were registered to collect money for the victims. Several fraudulent Twitter accounts also were created, and a scammer used the likeness of a bombing victim in a suspicious email asking for donations, says Massachusetts Attorney General’s Office Communications Director Jillian Fennimore.

The office’s nonprofit organizations and charity division issued a letter with suggestions, including a key piece of advice: “Be wary of appeals that are long on emotion” (see box on page 22).

Advice for Citizens

Among the advice about making donations to charity provided by the Massachusetts Attorney General's Office in the wake of the Boston Marathon bombing:

If you are contributing over the internet, make sure that the website you are visiting belongs to a legitimate, established, and registered charity, and that the website and the charity match. See if other legitimate websites link to that website. After tragedies, there are always individuals who will use the internet to perpetrate fraud, and you should make sure that the website you visit is operated by the charity you want to donate to.

Check to see if the charity is registered and filing with the attorney general's Non-Profit Organizations/Public Charities Division.

Know your charity. Verify the address, phone number, contact information, and review the website and written material. Consider a charity's history, purpose, track record, and reputation, and never give to a charity you know nothing about. If you have any doubts, well established charities with experience in disaster relief or organizations established with support from government agencies are generally a good choice.

Check out websites such as Charitynavigator.org and BBB.org/charity, where you will find additional information to help you understand a large number of charities. Examine your options. Do not feel compelled to give to the first charity you come across. There are a number

of established organizations already responding to the diverse needs created by the tragedy; in time, there may also be legitimate, smaller charities that will emerge to focus on specific populations and communities.

Be wary of appeals that are long on emotion. A legitimate charity will tell you how it's using your money to address a disaster.

Ask lots of questions. How much of the money goes to the charity and how much to a professional fundraiser? Ask who employs the telephone solicitor, if your contribution is tax deductible, and what the charity intends to do with any excess contributions that might remain after the victims' needs are addressed.

Beware of professional fundraisers who try to make their solicitations sound like they are coming directly from the charity itself or volunteers.

Do not pay by cash. Pay by check and make it out to the charity (use its full name; don't use initials), not the fundraiser. Never give your credit card number to a fundraiser over the telephone. If the fundraiser directly approaches you, ask to see identification. It is best to mail your check directly to the charity.

Tracking and assessing the use of funds raised through crowdfunded platforms such as GoFundMe also have proven challenging. GoFundMe itself has begun to report and otherwise cooperate with attorney general offices following the 2016 Pulse Nightclub shooting in Orlando, Florida, according to Victoria Butler, Director of the Consumer Protection Division for the Florida Attorney General's Office. Following the 2017 Las Vegas shooting, local leaders set up their own highly successful GoFundMe account, and the attorney general's office worked directly with the site to create a dedicated direct link for supporting victims and ensuring that funds raised by new accounts set up through GoFundMe go to their intended purpose. GoFundMe alerted the Nevada Attorney General's Office of fraudulent sites and helped to remove them, as well as waiving a portion of its fee for funds raised through the site.

CASE STUDY

After Sandy Hook, Averting Further Trauma

EVENT SUMMARY

In the years since the deadliest elementary school shooting in American history at Sandy Hook Elementary School in Newtown, Connecticut in December 2012, more than \$100 million in aid has flowed into the small community, but the way in which funds have been allocated has been contentious.

SPECIFIC CHALLENGES

Funds immediately began pouring into the community following the shooting, but uncertainty about the donors' intents led to questions of how to distribute charitable contributions—which exceeded \$20 million in the first few months following the tragedy alone. The result was contentious and emotional debate on how to equitably distribute funds that the United Way represented were being collected for victims' families and the community. “The town became a case study of how American’s material expressions of grief can become more an obstacle than an aid to recovery,” the New York Times stated in an [article](#) published in 2019.

THE RESPONSE

Attorney General George Jepsen and his office sought to avoid contentious lawsuits over the disbursement of funds that would contribute to the ongoing trauma. The office worked closely with charities and community organizations in the wake of the shooting and continued to monitor and support a wide range of organizations raising money for victims and the community. The office and its staff also met with victims' families at their request, coordinating through local government leaders.

To address the issue of the disbursement of funds, the largest individual fundraiser, the United Way, created a community foundation whose leadership agreed to give \$7.7 million of the \$10 million raised through March 2013 to the victims' families, with the remainder and any future donations allocated to community needs through the foundation.

The next month, Attorney General Jepsen released a letter saying the United Way's decision to designate \$7.7 million for victims' families did not legally violate the donors' intent. But he [criticized](#) the organization and the local bank which coordinated the donations for a lack of transparency.

Ultimately, the challenges faced in Sandy Hook have prompted other communities to bypass existing charities and create dedicated nonprofits for fundraising and support in the wake of natural or manmade disasters.

KEY POINTS/LESSONS LEARNED

Timing is critical. On the day of the shooting, a local bank set up a dedicated account with the local chapter of the United Way. More than \$1.2 million was contributed within days. Just as quickly, the bank and United Way began turning away money collected by individuals and groups not registered as charities to avoid issues with state charitable solicitation laws and uncertainty around what these parties had told the donors about the intended use of funds—including a well-publicized incident involving the local high school cheerleading team selling handmade pins. The flood of donations and support immediately following the tragedy led the attorney general's office to [tell charities](#) that it would interpret donations from individuals and groups as broadly supporting the Newtown and Sandy Hook communities to prevent funds from being turned away.

Collaborate with other agencies. In Connecticut, charities are regulated by both the attorney general's office and the state's Department of Consumer Protection. Both offices worked together on a variety of activities, including outreach and support to register unregistered individuals and asking organizations and individuals involved in charitable fundraising to complete a voluntary survey about their activities several months after the tragedy and again later in the year. The survey identified another cause of discontent with fundraising—the 43 charities which responded to the voluntary survey in April 2013 had only disbursed \$2.9 million of the more than \$20 million raised to that point.

Include the management of gifts and fundraising in statewide disaster plans. The challenges outlined above and others—for example, the flood of mail, gifts, and other noncash contributions that overwhelmed the small community's post office—make management of donations critical. One key is ensuring that state and local officials speak with a common voice on what raised money will be used for, says Karen Gano, assistant attorney general for the Connecticut Attorney General's Office Charities Division.

Monitor the Internet for fundraising contributions. For example, the office's staff found a local resident selling bracelets for Sandy Hook, and staff called and thanked him for doing so—and offered to come out and help him fill out paperwork.

FOR MORE INFORMATION

- ▶ [The Role of State Charities Regulators in Protecting Public Trust in Charitable Responses to Disaster](#)
- ▶ [Disaster Philanthropy Playbook developed by the Center for Disaster Philanthropy](#)
- ▶ [Sandy Hook Charities Report](#)
- ▶ [Charity Checklist](#)
- ▶ [Charities Disaster Relief Guide](#)

Working With The Media

Many of the communication issues following a manmade disaster are similar to those for natural disasters, but working with the media may take on greater significance as events unfold. Millard Mulé, communications director of the Louisiana Attorney General's Office, offers this advice for working with the press following disasters:

- Ensure coordinated messaging with law enforcement partners and public information officers—and stick to it. Among the strategies:
 - » Know how to set up a joint information center (JIC).
 - » Identify what has already been stated publicly, define each agency's roles, prepare executives to deliver messages, determine who will speak and in what order, and decide how to handle questions (if possible, ahead of time).
 - » By understanding each agency's role, you can utilize each other to your advantage (one agency may be able to say something another agency can't).
 - » Remember, the office, not the media, controls the narrative.
 - » Keep the focus on the investigation and ensuring good prosecution, including limiting politician and non-essential personnel access to command posts.
- Ensure all media appearances/requests are coordinated and everyone has visibility on them—networks will inundate you.
- Define the initial message—don't succumb to pressure (internal or external).
- Stick to the facts and make sure you understand the wider threat picture, not just the imminent crisis.
- If you get to a point where there's not much you can share, think like a reporter and find ways to drive the narrative.
- Log and document media requests and action taken.
- Have someone monitor media reporting and social media so you know what myths you want to dispel—but don't feel compelled to respond to everyone.

Preparing Press Briefings During a Crisis

- Be brief, avoid jargon.
- Consider the setting—is the scene being actively worked? Plan for the logistics of getting to and from the scene, provide instructions to media, and ask local law enforcement to assist in keeping media at the staging area.
- Avoid saying “no comment” whenever possible. Find other ways of “bridging,” or shifting to the message you want to get out.
- Set expectations for the timing for press updates.

LEGAL ISSUES RELATED TO DISASTER RESPONSE AND RECOVERY

As the chief legal officer of their state, attorneys general must be prepared to address and advise on a variety of legal issues before, during, and after an emergency or natural disaster. The summary below identifies several critical legal areas and provides links and references for further legal consideration. While some of these issues can only be addressed during or after an emergency, it is recommended that attorneys general and their staff consider all these areas as part of their overall preparedness planning.

EMERGENCY POWERS

A state or territory's emergency powers are largely the exclusive province of the governor. However, the attorney general can play an important role before, during, and after an emergency or natural disaster, by reviewing and interpreting emergency laws, issuing advisory opinions, and helping draft executive orders. To be prepared when an emergency or disaster strikes, the attorney general and staff should be familiar with the following four areas:

1. *How does the state **express or clarify** emergency powers?*

Most often, emergency powers and procedures are codified in statute. However, the state constitution may include language limiting the scope of available emergency powers—even those authorized by statute. Emergency powers and procedures may also appear in regulations issued by a state emergency management agency.

2. *How is that authority **made operational**?*

It is important to understand the conditions that can trigger emergency powers or justify a disaster or emergency declaration. Attorneys general must also understand how emergency authority is implemented and, where legislative involvement is mandated, work to ensure open lines of communication between branches.

3. *How is that authority **executed**?*

What is the scope and duration of granted emergency powers? Many emergency authority statutes or provisions contain express language defining their scope. Some states place sunset provisions on emergency declarations, but others require legislative action to terminate.

4. *How is that authority **delegated** to local governments?¹*

How much emergency authority and which, if any, powers can be delegated to local and municipal governments? The attorney general can play an important role in clarifying these authorities and ensuring coordination between state and local governments.

¹ Ernest B. Abbott, Otto J. Hetzel and Alan D. Cohn, *Federalism and Constitution Challenges* 13, ABA HURRICANE KATRINA TASK FORCE SUBCOMMITTEE REPORT (2006)

SEARCHES

Public servants, such as police or public health workers, may need to enter onto private property to reduce a health or safety risk to the general population or address an emergency situation. It is important that these actors know when it is legally permissible for them to engage in a search or a seizure and when they must wait and obtain some sort of administrative order or warrant beforehand. Attorneys general and their staff should be prepared to advise on topics such as warrantless searches and exceptions to probable cause and warrant requirements.

Warrantless searches are restricted under the Fourth Amendment, which provides that “[t]he right of the people to be secure. . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause” Most state constitutions have a provision similarly limiting searches and seizures. These provisions cannot reduce the protections offered by the U.S. Constitution, but they can increase those protections. As a consequence, state officials may be required to request a warrant, because a reasonable expectation of privacy exists under state law, in circumstances where federal authorities could enter without a warrant.²

Certain kinds of searches and seizures are valid as exceptions to the probable cause and warrant requirements, including:

Investigatory stops are valid if objective reasonable suspicion exists.³ When law enforcement holds a suspect beyond the amount of time necessary to effectuate the purpose of the stop, the seizure becomes unreasonable.⁴

Warrantless arrests are permitted for any felony that an officer has probable cause to believe the arrestee has committed and for any offense committed in the presence of a law enforcement officer.⁵ Warrantless arrests in homes are presumptively unreasonable.⁶ Aside from consent, only exigent circumstances (see below) can justify a warrantless entry into a house to make an arrest.⁷ After making a warrantless arrest, an officer must promptly secure a judicial determination of probable cause.⁸

2 Compare, e.g., *New York v. Class*, 475 U.S. 106, 118-19 (1986) (concluding entry to vehicle did not violate the Fourth Amendment of the U.S. Constitution) with *People v. Class*, 67 N.Y.2d 431, 433 (1986) (finding that same entry violated the New York constitution).

3 See *Terry v. Ohio*, 392 U.S. 1, 19-30 (1968).

4 See *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (“a police [traffic] stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures”).

5 See *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001); *United States v. Watson*, 423 U.S. 411, 416-17 (1976).

6 See generally *Payton v. New York*, 445 U.S. 573 (1980).

7 See, e.g., *Estate of Bing v. City of Whitehall*, 456 F.3d 555, 564-66 (6th Cir. 2006) (warrantless house arrest lawful because defendant had fired and had access to handgun, creating exigent circumstances); *U.S. v. Quezada*, 448 F.3d 1005, 1008 (8th Cir. 2006) (warrantless entry into apartment lawful because unlatched door gave officer reasonable suspicion of emergency situation); *Cortez v. McCauley*, 438 F.3d 980, 993 (10th Cir. 2006) (warrantless entry into house unlawful because there was no reason to “associate an emergency with the area . . . to be searched”), *vacated on other grounds*, 478 F.3d 1108, 1112 (10th Cir. 2007).

8 See, e.g., *Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975).

Exigent circumstances exist when there is probable cause for a search or seizure *and* when there is fear of imminent destruction of evidence, a safety threat to the police, hot pursuit, or a suspect is likely to flee before the police can obtain a warrant.⁹ Exigent circumstances also exist when the general public is threatened or when emergency aid is needed.¹⁰

There may be situations where the government's "**special needs**" permit it to dispense with the warrant and probable cause requirements. If a special need is found, it must be balanced against the nature of the intrusion and the privacy interest at issue.¹¹ A word of caution: this category is "closely guarded"¹² and narrow, and the Supreme Court has never "upheld the collection of evidence" under this exception "for criminal law enforcement purposes."¹³ As a result, it is important to research whether a legally recognized "special need" exists before relying on this exception to the warrant and probable cause requirements.

9 See *Warrantless Searches and Seizures*, 37 GEO. L.J. ANN. REV. CRIM. PROC. 39, 72-74 (2008); See also *United States v. Plavcak*, 411 F.3d 655, 664 (6th Cir. 2005).

10 See, e.g., *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

11 See *Johnson v. Quander*, 440 F.3d 489, 497 (D.C. Cir. 2006) (government interests in "monitoring probationers, deterring recidivism, and protecting the public" justify collection of probationer's DNA because probationer has reduced privacy interest). *But see, e.g., United States v. Carnes*, 309 F.3d 950, 960-61 (6th Cir. 2002) (special needs seizure of audio tapes from parolee invalid when parole hearing suggesting officers' actual motivation was unrelated to enforcement of parole).

12 *Ferguson v. City of Charleston*, 532 U.S. 67, 84 (2001)

13 *Id.* at 83 n.20

EVACUATION

In emergencies, the federal Stafford Act, which directs the governmental response during states of emergency, allows for forcible eviction of citizens.¹⁴ State laws vary on how evacuations may take place, so it is important to look to state and local emergency statutes and penal codes to determine any restrictions.

Liability

States have various provisions regarding immunity of public entities in disaster management.¹⁵ Actions taken pursuant to evacuations are generally immune from lawsuits.¹⁶ Additionally, some states have an “emergency doctrine” which provides that when an individual, who is not negligent, is suddenly confronted with apparent or actual imminent danger, that person would not be held to the same standard of judgment and prudence as under ordinary circumstances.¹⁷

Federal Assistance

The Federal Emergency Management Agency (FEMA) manages disaster preparation and response programs in coordination with state and local governments.¹⁸ Federal officials are required to assist evacuation procedures if the scale of a disaster overwhelms state and local authorities—in this situation the federal officials must “take the lead on coordinating necessary decisions, support research and rescue efforts, and provide technical assistance.”¹⁹ The National Response Plan vests the responsibility for the displacement, the provision of shelter, and the provision of resources to areas of displacement in both FEMA and the American Red Cross.²⁰

14 Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, 42 U.S.C. §§ 5121-5206 (2000).

15 Jonathan Jorissend, *Katrina's House: The Constitutionality of the Forced Removal of Citizens from their Homes in the Wake of Natural Disasters*, 5 AVE MARIA L. REV. 587 (2007).

16 Ken Lerner, *Governmental Negligence Liability Exposure in Disaster Management*, 23 URB. LAW. 333, 336-40 (1991).

17 See, e.g., California Governor's Office of Emergency Services, *supra* note 5, at 23. (“The two basic and indispensable elements of the doctrine are: The sudden and unexpected appearance of danger and the necessity of making an immediate choice between two or more alternative sources of action. If both of those conditions are met, the person is not necessarily negligent if that person makes a choice that ultimately proves to have been the wrong one, provided that person chose one of the courses of action that a person of ordinary prudence would have chosen under the circumstances. If such is the case, that person will not be liable even if an alternative course of action existed.”) See also *Leo v. Dunham*, 41 Cal.2d 712, 714-715 (1953); *Schultz v. Mathias* 3 Cal. App. 3d 904, 912-13 (1970).

18 Exec. Order No. 12,148, 3 C.F.R. 412 (1979). On the interplay between federal and state laws see generally Keith Bea, Cong. Research Serv., *Disaster Evacuation and Displacement Policy: Issues for Congress* (2005), available at <http://www.fas.org/sgp/crs/misc/RS22235.pdf>.

19 *Id.* at 2-3 (discussing the Department of Homeland Security's National Response Plan).

20 See also Statement of Kenneth W. Kaiser, Special Agent in Charge, Boston Field Office, FBI, available at <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg27025/html/CHRG-109shrg27025.htm>.

POLICE POWERS

Detention

The detention powers of public authorities must stem from legislative grants of authority—it is therefore important to be aware of state detention laws.²¹ Procedures should be set out to clarify a guarantee of due process rights and access to courts when they are reconvened.

Curfew

Curfews are official orders to return home before a stated time that may be imposed by a government to maintain public order. Curfews are set by state and local governments, so it is important to look at state provisions on the issue. In some states, once there is a declaration that a state of emergency exists, “the general necessity of restoring order is taken to prevail over assertions of individual rights, justifying sweeping measures, like curfews, whose application to each individual does not have to be supported by a separate showing of necessity.”²² Curfews are generally held to be constitutional when dealing with riots regardless of whether there is a declared state of emergency.²³

Curfews require close judicial scrutiny because:

1. The scope of a curfew may be unlawful if it is more extensive in terms of duration or geographical extent than is necessary to deal with the disorder.²⁴
2. If sufficient notice is not provided, there is a risk that citizens could be charged with a violation of a curfew they did not know existed.

21 See generally Stephen I. Vladeck, *The Detention Power*, 22 YALE L. & POL. REV. 153.

22 Note, *The Exercise of Emergency Powers*, 85 HARV. L. REV. 1284, 1288 (1972).

23 In re Juan C., 28 Cal. App. 4th 1093, 33 Cal. Rptr. 2d 919 (1994)

24 See, e.g., J. Garner Anthony, HAWAII UNDER ARMY RULE 58 (1955). (In Hawaii, a curfew was retained long after the threat of a Japanese attack had subsided.)

STATE-FEDERAL RELATIONS

Legal issues relating to state-federal relations can arise in the time of an emergency. The three primary legal issues are:

1. *When the state can seek assistance from the federal government*

The Stafford Act²⁵ sets forth the process by which the federal government may assist states with emergencies or major disasters, pursuant to declarations by the president upon request by the state governor.²⁶ For a “major disaster” the governor must find “that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.”²⁷ The governor must make the same finding in the case of an emergency.²⁸

Some emergencies may elicit a federal response without any action by the state governor. Under the Stafford Act, the president may declare an emergency if he “determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.”²⁹ Traditionally, the president has found such “primary responsibility” in the wake of attacks on federal buildings, disasters involving Indian tribal lands, and incidents involving nuclear materials.³⁰

2. *Limits on law enforcement assistance*

The state may seek federal assistance specifically for law enforcement matters under the Emergency Federal Law Enforcement Assistance Act.³¹ When receiving such assistance, some states have “insisted on deputizing federal law enforcement officers or swearing them in as peace officers under state law on the ground that they would be enforcing state laws.”³²

25 42 U.S.C. § 5121 *et seq.* (2006).

26 See Elizabeth Bazan, CONG. RESEARCH SERV., RL33090, ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT: LEGAL REQUIREMENTS OF FEDERAL AND STATE ROLES IN DECLARATIONS OF EMERGENCY OR A MAJOR DISASTER 1 (2005).

27 42 U.S.C. § 5170. In addition, 44 C.F.R. § 206.36 sets out further detailed procedures and requirements, including setting up the Regional Director of the Federal Emergency Management Agency (FEMA) as liaison between the governor and president, and establishing a 30-day time limit for the request to be submitted.

28 42 U.S.C. § 5191. FEMA regulations also require that this request be made through the FEMA Regional Director and must be made within five days after the need for assistance becomes apparent, but no longer than 30 days after the incident occurs. See 44 C.F.R. § 206.35.

29 42 U.S.C. § 5191. This applies only to a declaration of an “emergency.” No provision gives the president power to declare a “major disaster” without a request by the state governor.

30 Ernest B. Abbott, Otto J. Hetzel, and Alan D. Cohn, *Federalism and Constitutional Challenges*, in ABA HURRICANE KATRINA TASK FORCE SUBCOMMITTEE REPORT (2006).

31 42 U.S.C. § 10501 (2006).

32 Jason Mazzone, *The Commandeerer in Chief*, 83 NOTRE DAME L. REV. 265, 300 (2007).

The Posse Comitatus Act precludes the use of active duty military forces as domestic law enforcement, except as authorized by Congress.³³ The act does not apply to the Coast Guard,³⁴ and Congress has authorized the military to provide indirect assistance to law enforcement, which may include supporting search and rescue efforts and supplying equipment and intelligence.³⁵ If the President finds that “unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States,”³⁶ the President may authorize the military to enforce domestic law under the Insurrection Act³⁷ in spite of Posse Comitatus.³⁸

Most importantly, the Posse Comitatus Act can play a critical role in the governor’s decision whether to retain the state National Guard under state control. The National Guard is not subject to Posse Comitatus while under state jurisdiction but, once under federal control, the act applies.³⁹ Thus, the National Guard can only act in a law enforcement capacity when subject to state, not federal, jurisdiction.⁴⁰

3. *The anti-commandeering doctrine*

Another limit on the federal government in relation to the state during an emergency is the Supreme Court’s anti-commandeering doctrine. In *Printz v. United States*,⁴¹ the Court held that the federal government could not direct state executive officials to perform firearms background checks under federal law. The Court did so over the dissent of Justice Stevens, who expressed concern that the doctrine should not apply to limit the ability of federal officials to enlist state officers in times of crisis or emergency.⁴² Thus, federal efforts to take command of local officials following an emergency or disaster may run afoul of *Printz*.⁴³ The anti-commandeering doctrine does not limit cooperative action between the federal government and the states. Indeed, some states have statutes expressly empowering the governor to take steps to effect cooperation with the federal government.⁴⁴

33 18 U.S.C. § 1385 (2006).

34 See 14 U.S.C. § 89(b) (2006). (Coast Guard officers, when enforcing federal law, are deemed law enforcement agents subject to the appropriate department.)

35 See also Mazzone, *supra* note 10, at 288-89. 10 U.S.C. § 375, § 382 (2006).

36 *Id.* at § 332.

37 *Id.*

38 John A. McCarthy, Randall Jackson, and Maeve Dion, *Posse Comitatus and the Military’s Role in Disaster Relief*, in ABA HURRICANE KATRINA TASK FORCE SUBCOMMITTEE REPORT 23, 24 (2006).

39 *Id.* at 25.

40 *Id.* at 25-26.

41 521 U.S. 89 (1997).

42 *Id.* at 940 (Stevens, J., dissenting).

43 See Matthew C. Waxman, *National Security Federalism in the Age of Terror*, 64 STAN. L. REV. 289, 311 (2012).

44 See, e.g., CAL. GOV. CODE § 8573 (“The Governor may cooperate with the President and the heads of the armed forces and other agencies of the United States, and with officers and agencies of other states, on matters pertaining to emergencies; and he may take any steps he deems necessary to put into effect any rules, regulations, or suggestions made by such persons or agencies.”).

CONSUMER PROTECTION

Attorneys general are tasked with the job of protecting consumers in all stages of a disaster. It is important for attorneys general to have a comprehensive plan in place before a disaster occurs in order to be able to effectively protect consumers. In addition to substantive preparations, attorneys general should publicize their roles as consumer protectors through consumer protection initiatives and public service announcements before disaster strikes so that consumers know where to turn when issues arise.

It is important that the office of the attorney general be familiar with its own state's civil and criminal statutes in prosecuting consumer fraud and that the attorney general's understanding of these statutes matches the governor's understanding. Also critical is understanding the effect, if any, that a declared state of emergency has on the operations of these statutes and whether state laws allow for emergency regulations affecting the sale of consumer products and whether there are any limits on that power.

Some important legal issues related to consumer protection that should be addressed before a disaster or emergency include:

1. *Anti-price gouging*

An understanding of how the state's anti-price gouging statute is triggered and how it applies to various products and services is the first step in preparing for price gouging issues related to a disaster.

2. *General fraud*

The attorney general's office can use state consumer protection and general fraud statutes as a tool and can use its visibility in its consumer protection role as a deterrent, alerting consumers to the dangers of fraud, protecting legitimate businesses, and increasing the likelihood that consumers will report instances of fraud.

3. *State Contracting*

There will likely be an increased need for contracting for goods and services by the government in the wake of a disaster. State statutes and regulations might change the procurement procedures during a state of emergency. Many of the problems surrounding state contracting can be addressed ex ante by mutual aid agreements of the type discussed above, and attorneys general can use these agreements to secure the availability of an adequate number of contractors while not sacrificing the protections of traditional licensing requirements.

4. *Private Contracting*

An important issue in the realm of private contracting during and after an emergency is the licensing requirement. The attorney general's office can publicize this requirement and inform consumers that they can demand proof of license before engaging a contractor or other remediation service provider. If the state is a member of a mutual aid agreement that allows for the portability of licenses, the attorney general's office should publicize this fact in the same manner that it publicizes the general licensing requirement.

CHARITIES

In the wake of a disaster, attorneys general are responsible for protecting charitable organizations' donors and aid recipients, as well as protecting the organizations themselves from fraud. In order to effectively fulfill these post-disaster roles, it is prudent to develop comprehensive plans before a disaster occurs to ensure appropriate monitoring and coordination of the activities of charitable organizations. Efforts should also be made post-disaster to increase the availability of information to donors and victims. Plans for increasing opportunities to contribute and benefits available would also assist in facilitating disaster relief.

Steps the office might take to prevent charity fraud during this crucial time include coordinating with the governor's office to establish a state-vetted charity to aid disaster victims as soon as possible, coordinate with the media to advertise state-vetted charities and means to provide donations, and educate the public regarding responsible giving practices, including information about tax-deductible charitable donations and providing funds to a crowdfunding campaign.

Attorneys general might consider collaborating with neighboring states in mutual aid agreements, wherein states allow charitable organizations that are registered with another state to operate before registering in the aftermath of a disaster.

In addition to monitoring the activities of charitable organizations, attorneys general should take a proactive role in planning for the coordination of charitable organizations in the event of a disaster. Although it is not the place of the attorney general to direct the activities of charitable organizations, joint disaster planning efforts are likely to increase the effectiveness of post-disaster relief efforts.

The attorney general can convene a committee dedicated to assessing the status of state- and region-wide mutual aid efforts that include representatives of the office of the attorney general (and other state agencies charged with overseeing charitable organizations), major charities, local law enforcement, government, first responders and others who are situated to understand the needs of disaster victims.

WELFARE
TERRORISM
PROPERTY
MASS SHOOTING
PROTECTION
INFRASTRUCTURE
COMMUNICATION
POWER
RISK
PREPAREDNESS
HURRICANE
RESCUE
ALERT
SECURITY
DISASTER
WARNING
THREAT
EARTHQUAKE
PLANNING
MEDICINE
DISEASE
MITIGATION
UTILITIES
AID
NAAG PRESIDENTIAL
INITIATIVE ON
EMERGENCY
AND CRISIS MANAGEMENT
TORNADO
DANGER
ENVIRONMENT
TECHNOLOGY
LOOTING
TRAINING
FLOOD
SUPPORT
COORDINATION
TRANSPORTATION
HOUSING
EDUCATION
HAZARDOUS MATERIALS
CONTINGENCY
PREVENTION
SAFETY
HEALTHCARE
WILDFIRE
RESPONSE
ACTIVE SHOOTER
TSUNAMI

DISASTER PREPAREDNESS CHECKLIST

This Disaster Preparedness Checklist is designed to assist all state and territory attorney general offices in preparing for a disaster or emergency. While jurisdictions may differ, attorneys general can prepare their offices in many similar ways. Most states have disaster preparedness manuals as well as continuity of operations plans in place—this checklist is not intended to replace those. Rather, this checklist is meant to provide recommended actions to preserve and maintain the capabilities to perform the mission and duties specific to the office of attorney general based on best practices shared from attorney general offices around the country.

Because the following checklist borrows from the expertise of many attorneys general and their staffs who have experienced disasters in their respective states, it should substantially prepare an office of attorney general for a disaster if thoroughly followed and implemented. The checklist is divided into categories to aid in delegating implementation responsibility across an attorney general office.

As you implement each item in the checklist, please consider:

- Has this step been completed? If so, by whom? If not, to whom should it be delegated? What is the timeframe for completion?
- Once the step has been completed or if it is already completed, when should this step be revised/updated to remain current and valuable as a resource?
- Can this step be supported by the resources, plans, and procedures that have been put in place?

PREPARATION

☐ Establish a work schedule and deadlines for development of this plan.

☐ Conduct a self-assessment for the level of preparedness of your office.

☐ Develop an initial budget for items such as research, printing, seminars, and other expenses to implement this plan.

STAFF

Ensuring the needs of staff and their families are met is crucial to an attorney general's office being able to execute its responsibilities to constituents during a disaster. To make sure employees are present and capable of performance, your office needs to be prepared in the following ways.

Communications

- ☐ Have a system or process in place to account for all of your employees (For example, a central number, supported outside the office, where employees can call in and account for themselves or a contact tree.).
- ☐ Have a plan for communicating with employees' families in an emergency and ensure that you have a system for updating this information as employees change.
- ☐ Encourage employees to:
 - Consider how they would communicate with their families in case they are separated from one another in an emergency;
 - Arrange an out-of-town contact for all family members to call in an emergency;
 - Designate a place to meet family members if they cannot get home in an emergency; and
 - Consider alternate routes between home and work if certain routes are inaccessible.

Health and Safety

- ☐ Assess employee medical needs and have the required supplies.
- ☐ Create and maintain an office point of distribution for vaccines in case of a pandemic.
- ☐ Have a building evacuation plan.
- ☐ Make sure all employees have a "go-kit" containing survival supplies in their offices. Contents might include: flashlights with working batteries, basic first aid equipment, canned goods, water, alternate cell phones, pens, and paper.
- ☐ Know the scope of state liability for injuries to workers assigned to emergency activities outside of their normal duties.

Resources and Staffing

- ☐ Make sure your office has personnel coverage or redundancies not only for decision-making, but also for operations.
- ☐ Ensure your employees have the resources available to continue working.
- ☐ Make sure the office's essential and first responder employees have the correct credentials and access to travel.

STAFF

☐ Develop a plan to ensure that your human resources department will be able to continue paying employees in an emergency.

- Your human resources department should be able to continue to function without computers or access to your original office and database.
- If your office contracts with a private vendor, ensure that the contractor will be able to continue operations in an emergency.
- Your payroll system should be able to provide 40-hour payroll, even if time off cannot be ascertained until after the event.
- Determine whether there are particular requirements for overtime by state employees who conduct emergency response activities.

☐ Be prepared to provide additional employee support, including: cash advances, salary continuation, flexible work hours, reduced work hours, crisis counseling, care packages, and day care.

- Determine when these services should be initiated and how long they should last post-incident.

☐ Allocate for employee salaries, travel, investigators, attorneys, and other emergency needs in any grant proposals.

☐ Hold emergency preparedness trainings that involve all employees in your office.

☐ Cross-train employees to ensure there is always more than one person trained in any given area.

☐ Assess each employee's skills. Your staff may be able to assist in an emergency using skills other than known office skills; essentially, your workforce can be a resource. Determine if your employees:

- Speak another language;
- Are trained in first aid or CPR and have current certification paperwork on file; and/or have any survival or emergency training from a previous job or hobby.
- Are familiar with federal agencies, such as FEMA. Consider if they have worked with the agencies in the past; are apprised of rules, policies, and common practice at the agencies; and/or maintain contacts there?

☐ Learn which activities undertaken by your staff and other state and local staff are reimbursable by FEMA and familiarize your office with FEMA's accounting requirements for reimbursable expenses.

☐ Where possible, participate in federal National Incident Management System trainings.

☐ Determine if your office will send state attorney general representatives to state Emergency Operation Centers (EOCs) to provide services, such as legal advice to state officials, or to help survivors answer legal questions arising out of disasters.

☐ Be ready to perform some non-traditional tasks that may extend beyond that which the attorney general office is statutorily or traditionally required to do.

CONTINUITY OF OPERATIONS PLAN

- ☐ Maintain an updated copy of the statewide Continuity of Operations Plan (COOP), both in your office and offsite.
- ☐ Make sure essential personnel each have a copy of the COOP.
- ☐ Maintain an updated copy of your office's own COOP, both in the office and offsite.
- ☐ Your COOP should:
 - Be structured to cover all hazards;
 - Identify those threats that are most likely to occur;
 - Identify and prioritize essential functions;
 - Determine essential functions staff;
 - Identify who in your office is best suited to be part of the brainstorming and legal issue spotting part of disaster preparation and response;
 - Identify who will be best suited for the immediate decision-making that is required in disaster response;
 - Establish orders of succession and delegated authorities; determine not just a #2 decision-maker, but the #3, #4, etc. to be able to make critical decisions when the attorney general is not available.
 - » Comply with all state law requirements with respect to establishment and filing of the appointments of these emergency interim successors to office.
 - » Consider how to stagger the on-duty schedules of these decision-makers in order to avoid fatigue caused by long hours on duty.
 - » Ensure these decision-makers have a working knowledge of how the state's emergency management plan is implemented during an emergency, the chain of command, and protocols for contacting involved state and federal officials.
- ☐ Put in place processes to:
 - Practice your office's COOP;
 - At least annually, coordinate feedback regarding COOP activities during a disruptive event, evaluate effectiveness, and identify areas of improvement;
 - Ensure employees understand their respective responsibilities;
 - Train new staff members;
 - Keep records of facility assets up to date;
 - Update and maintain current names, titles, and telephone numbers in the plan;
 - Develop a process for providing feedback on strengths and deficiencies and updating plans as necessary based on lessons learned; and
 - Prepare staff to provide answers or referrals in response to citizens' questions that may fall outside of the ordinary scope of operations.

CONTINUITY OF OPERATIONS PLAN

Contact Information

- ☐ Maintain updated contact information for:
 - Key decision-makers and successors in your office, as mentioned above
 - Key state government contacts as well as the identity and contacts for their emergency interim successors:
 - » Key members of the governor's staff, including her/his counsel
 - » State emergency management agency
 - » State waste management agency
 - » State environmental protection agency
 - » State insurance commissioner
 - » Medical examiner's office
 - » Contractor licensing boards
 - » In-house counsel at the public safety department
 - » In-house counsel at the state health department
 - » In-house counsel at the human services department
 - » In-house counsel at the state agriculture department
 - » In-house counsel for the state department of natural resources
 - » In-house counsel for the state fire marshal
 - » Emergency Management Assistance Compact contacts
 - » The state adjutant general
 - » Port and bridge authorities
 - » Relevant officials or counsel for any state government which has a mutual aid agreement with your state
 - Key federal government contacts:
 - » Federal Emergency Management Agency, both the regional office and headquarters
 - » United States Army Corps of Engineers
 - » United States Environmental Protection Agency, both the regional office and headquarters
 - » Centers for Disease Control
 - » Nuclear Regulatory Commission
 - » Federal Trade Commission
 - » Department of Housing and Urban Development
 - » Department of Transportation
 - » Department of Health and Human Services
 - Potential local government and organizational contacts, sheriffs, and local police
 - State and local business associations
- ☐ Make sure contact information will be accessible in the event that the main office is shut down.

FACILITY

Your physical facilities, including your offices, should be prioritized once your personnel have been secured. The usual facility in which your staff works may not be accessible in a disaster. You may need to create a satellite office at the locale of the disaster. You also need to be aware that your capital city itself might not be accessible:

Alternate Facilities

- ☐ Identify alternate facilities in case you can no longer operate out of your office. The alternate facilities should:
 - Be able to operate completely independently of the original office and original data sources at that office;
 - Have a back-up power source that is tested monthly; and
 - Have sufficient space and equipment, reliable logistical support, services, and infrastructure to sustain operations for at least 30 days.
- ☐ Determine the minimal level of resources necessary to continue critical business functions at your alternate facility.
- ☐ Include in your plan procurement and acquisition procedures for necessary personnel, equipment, and other resources.
- ☐ Plan options for those facilities if the disaster has a wide area of destruction.
- ☐ If you have staff housed with client agencies that may use separate equipment, such as computers and servers, confirm that the agency's emergency contingency plans include provisions for those staff.
- ☐ Plan how you will set up satellite offices for attorney general employees who cannot make it to the physical location of the relocated office.
 - Ensure you have the capabilities necessary to allow people to work from home, including laptops that connect to your server.
 - Determine whether you need to have a certain level of emergency or declaration in order to allow employees to work from home.
 - Plan for periodic meetings with staff who may be working at separate, alternate facilities or home for extended periods of time.
 - Make arrangements for employees to take hotline calls if the main office is compromised.
- ☐ If your office does not have an established location at or near disaster-affected areas, explore the possibility of sending employees where they are needed to take complaints, investigate local abuses, coordinate with law enforcement, and circulate tips.
- ☐ Create a timeline and a process to coordinate with staff to resume operations at your original worksite.
 - Develop a schedule to return work operations, personnel, and equipment from the alternate recovery site back to the primary work site.
 - Ensure you can continue essential mission operations at the alternate work site until the affected primary site has been returned to its original state, including required office infrastructure support, equipment, resources, network access, and telecommunications capabilities.
 - When the primary worksite is habitable and operable, have a process to acquire, install, check, and bring all business functions to operational status.

EQUIPMENT/INFRASTRUCTURE

Once you have secured personnel and facilities, you should determine how essential equipment and infrastructure will be made available. Essential equipment includes hardware, software, servers, means of communications including office phone lines, and essential files. Consider the following:

Records

- ☐ Go through your electronic and hard copy information to identify vital records and databases.
- ☐ Ensure that you have computer redundancy of these records and databases.
- ☐ Determine whether client agencies that provide space, equipment, and infrastructure to attorney general personnel have ensured redundancy of records and databases.
- ☐ Ensure that you have moved physical data and stored electronic data to a geographical location far enough removed from the physical location of the office that it likely will not be destroyed by the same forces necessitating the backup process.

Equipment

- ☐ Identify in advance what types of equipment and supplies you will need.
 - Potential emergency supplies including: chain saws, portable generators, gasoline, cell phones, flashlights, batteries, vehicle repair equipment, extra clothing, and drinking water.
 - Critical office equipment necessary to maintain the mission and duties of the office, such as computers, fax machines, and copiers.
- ☐ Determine sources for securing necessary equipment, such as from other jurisdictions through mutual aid agreements, stockpiling, or the vendor-managed Emergency Operations Center (EOC).
- ☐ Consider transportation issues, such as:
 - Whether there is gas for vehicles or available helicopters so the attorney general can be present at any disaster site; and
 - Whether there are sufficient means for obtaining gas throughout the state for transport of essential employees.
- ☐ To expedite recovery, develop lists of licensed, insured debris removal contractors and other service providers with whom you can contract safely and quickly.
 - Determine if the state will make use of or disseminate a national registry of disaster response contractors pursuant to 6 U.S.C. § 796.

EQUIPMENT/INFRASTRUCTURE

Contracting

- ☐ Create form contracts you can use to supplement assistance from state and local governments. Determine if state laws requiring a competitive bidding process are suspended by declaration of a state of emergency.
 - If so, what protections are in place to ensure that the state is not a victim of price gouging?
 - May the state only contract with contractors who are licensed?
- ☐ Determine if an emergency situation allows expedited licensing procedures.
- ☐ Have templates of contracts available to accelerate recovery negotiations.
- ☐ Determine how long the waiver of competitive bids and other procurement requirements should last after the emergency and its immediate aftermath.
- ☐ Ensure the office has sufficient resources to respond to the needs of client agencies, such as transportation and buildings agencies, that will be executing numerous contracts on an expedited basis.
- ☐ Create processes to deal with retroactive contracts, such as those entered into after the work is started and, in many cases, completed.

Other Services

- ☐ Put processes in place to deal with credentialing out-of-state doctors, pharmacists, and other health care professionals.
- ☐ Maintain contact information to acquire additional volunteer legal help in the wake of a crisis, such as from local bar associations. You may wish to consider using law students, professors, and facilities at local law schools.
- ☐ Familiarize your office with the processes and requirements for employees from other states to provide assistance under your state's Emergency Mutual Aid Compact or other interstate aid agreement in order to limit their liability. Similarly, ensure your office is familiar with these processes and requirements if your state employees are sent to other states to assist under the applicable compacts.
- ☐ Determine whether the office will have a role in facilitating the relationship between the public sector and the private sector in order to maintain essential infrastructure necessary to maintain the mission.
- ☐ Ensure you are able to provide legal advice regarding communications with the private sector, including advice on restrictions, such as procurement rules and ex parte rules on communications with the private sector and applicable emergency exceptions.
- ☐ Determine whether the state will seek to register businesses and/or employees entering/operating in the disaster area. In particular, determine if special attention will be needed for particular types of businesses with a high potential to harm customers.

RELATIONSHIPS

Emergency responders, including law enforcement, fire departments, and medical personnel, are likely to be the first on the scene of any disaster. They will also have a significant presence throughout the relief efforts. Coordination with these departments and other local, state, and federal entities will be essential if your office is to react as efficiently as possible to a disaster scenario.

In order to be prepared and effective during a crisis, your office must cultivate relationships with law enforcement and other government organizations as well as with the local community. Consider the following:

- ☐ Establish a presence in your state's Emergency Operations Center (EOC).
- ☐ Understand the role of your office under the state's Emergency Operations plan.
- ☐ Participate in the discussions of issues, planning, drills, and strategy-building that responders engage in at the EOC.
- ☐ Educate your office on what emergency responders' actions will be in a disaster, including what role your office will play.
- ☐ Have an attorney in or available to the EOC to provide guidance on legal concerns, including curfews, mass arrests, jail diversion, ability to close or direct businesses, compliance, and liberties at shelters.
- ☐ Maintain a network of contacts at the EOC, through the personal relationships that grow between your representative and emergency service representatives from repeated meetings. Continuity will help foster relationships.
- ☐ Have your fiscal department represented in the EOC. Disaster relief requires financial decisions throughout, including maintaining payroll, funding reconstruction, and purchasing emergency supplies.
- ☐ Establish partnerships with state and local law enforcement.
- ☐ Developing personal lines of communication and a pattern of cooperation will provide intangible benefits that may prove invaluable in an emergency:
 - Expedite communication so your office can get the information it needs as fast as possible.
 - Ensure your needs will be prioritized.
 - Establish a history of trust, so that responses can be more easily coordinated; and
 - Ensure your office has advocates among law enforcement who can persuade isolated and wary departments to support your efforts.
- ☐ Develop a strategy for a coordinated response to disasters, including clear lines of authority.
- ☐ Create a system for deputizing personnel, if necessary.
- ☐ Establish procedures for timely, coordinated communication with the public.
- ☐ Have a plan for sharing evidence.
 - Medical responders and police often keep records and take photos that could be crucial evidence for lawsuits by or against the state. Make sure you know what they have and how you can access it.

COMMUNICATIONS

During emergencies and crises, it is imperative to educate constituents. Share safety tips with them early and often. Always remember to put victims first. And carefully check and re-check all facts. If an error or mistake is made, correct it as soon as it is discovered.

- ☐ Create a communications plan for all scenarios, including life without email, text, or phone.
- ☐ Designate a Public Information Officer. Name a backup in case the primary is impacted or unavailable.
- ☐ Pack a “go kit” so you can easily integrate into a command post. This should include a laptop/tablet, extra phone chargers, media distribution lists, press release templates, wireless connectivity (SIM card, hotspot, etc), external hard drive, camera, notebooks, and pens.
- ☐ Develop a strategy to publicize the office’s disaster response and recovery efforts.
 - Have a process in place to contact media, draft news releases for the public, and provide opportunities for the attorney general to present central public messages.
 - Consider using social media, including Twitter, Instagram, Facebook, LinkedIn, or a social media aggregator.
- ☐ Have a process in place to set up an emergency hotline.
 - Consider separating hotlines by subject, such as consumer protection matters, solid waste issues, and medical and safety issues.
 - Determine whether to use landlines or cell phones for the hotline.
 - Appoint a point of contact to communicate with other government agencies, including law enforcement agencies, to let them know about your hotline.
- ☐ Publicize early enforcement actions, including subpoenas issued and arrests made.
- ☐ Make the contact information for general assistance resources publicly available, including local and national relief groups such as the Red Cross, the Salvation Army, and FEMA.
- ☐ Have posters available for display in disaster relief centers warning of consumer fraud, scams, and price gouging, as well as instructions on how to handle solid waste disposal.
- ☐ Prepare an emergency insert (bilingual if necessary) that is brightly colored and noticeable to include in FEMA recovery checks.
- ☐ Consider credentialing of journalists in order to establish who would have permission to access certain disaster areas.
- ☐ Consider distributing a “Disaster Documents Checklist” for citizens that informs citizens on essential documents to keep with them in case of disaster, including: identification; medical information; proof of address; insurance information; legal documents, such as adoption papers, birth certificates, and wills; cash and banking items; keys; and recent photos of the home.

MISSION/LEGAL

In preparing for an emergency, you should assess essential versus non-essential departments, programs, and personnel within your office to maintain services critical to the office's duties and mission. In order to preserve necessary support for your primary mission of legal services to the state and protection of citizens, you need to determine what areas of your office are critical and what legal issues need to be considered to carry out your duties in a disaster and to minimize litigation after the disaster has passed. Emergency powers that may give rise to legal issues include: isolation; quarantine and lifting quarantine; medical examination; vaccination; treatment of people or animals carrying disease; identifying routes, modes of transportation and evacuation centers; temporary detention of looters; requiring and fast tracking registration and licensing for contractors; and enforcement of price gouging statutes. Consider the following:

Emergency Powers

☐ Conduct legal research for all relevant emergency powers in the jurisdiction, including:

- When do laws become effective? Are there provisions for emergency laws to become effective sooner than non-emergency laws? What are the steps?
- Who has the authority to declare an emergency? What laws, potential actions, and access to benefits are triggered as a result of the declaration?
- What differences in declarations of an emergency apply for a local emergency, a state-declared emergency, or a federally declared emergency?
- Are there special acts for your jurisdiction or local laws, ordinances, and regulations on these topics?
- Do any local government emergency preparedness agencies have published practices or procedures?
- Are there any attorney general opinions issued on emergency topics?
- Does your state have Good Samaritan laws in place that should be publicized prior to a disaster?
- Which laws may be subject to suspension under emergency powers or by executive order? What are the mechanisms for suspending them?

- Does a declaration of emergency give specified state officials the authority to postpone or reschedule an election within the state? If so, are there provisions setting out considerations and circumstances for declaration of a postponement and/or rescheduling of an election, or are general emergency powers broad enough to allow the governor or other state official to take action effecting a postponement of an election?

☐ Create form briefs and other potentially useful materials related to emergency orders and declarations or proclamations of emergency. These would include supporting motions to compel compliance with emergency requirements, including supporting case law on conditions, authority, and scope of emergency powers.

☐ Print these form briefs so they are available if computer and copier access is unavailable.

MISSION/LEGAL

☐ Familiarize your office with the effect of a declaration of an emergency on the court system.

- How will you determine attorneys' scheduled court dates and ensure all deadlines are appropriately dealt with if the attorneys cannot meet the dates that were set prior to the disaster?
- Are you prepared to do this in situations where the appearances are in unaffected parts of the state?
- Have you identified cases where venue may be changed to a different court if individuals in state custody and/or facilities must be relocated in a disaster?

☐ Determine how your governor views his or her executive orders and emergency powers.

- Does the governor issue executive orders on each discrete issue or issue blanket orders to waive groups of laws at one time?
- What is the attorney general's role in this process? Will the governor ask you for review or will you need to ask to review them?
- If the governor attempts to wield emergency powers or orders beyond the legally authorized scope or duration, who may challenge this authority? Can or should you consider challenging any unauthorized assertions of emergency executive power by the governor?

☐ Review other emergency powers which are likely to have constitutional and procedural constraints, including:

- Restricting access to contaminated areas; requiring disclosure of medical matters; requiring health professionals to assist in emergency health and safety measures; suspending the sale of consumer products; using private property for public purposes to support public health and safety; and using public resources on private property to eliminate health and safety risks.

☐ If your state is part of an interstate compact or mutual aid agreement:

- Familiarize yourself with the relevant states' emergency laws, ordinances, and regulations.
- Determine how interstate groups/associations factor into the emergency laws, and who will be in command of such groups.
- Determine if local or municipal governments have the authority to declare a state of emergency and the extent of their emergency powers, including what emergency powers are reserved for the state and whether local declarations or assertions of power are subject to review at the state level.

☐ Research procedures for ending a state of emergency, including:

- Which government institutions are empowered to end a state of emergency?
- Do sunset provisions automatically limit the duration of the governor's executive orders or powers?

MISSION/LEGAL

Federal Relations

☐ Take steps to ensure that the state is in compliance with federal requirements and conditions for disaster funding.

☐ Familiarize yourself with the key federal laws that might come into play during a state of emergency, including the Stafford Act, 42 U.S.C. § 5121 et seq. and Insurrection Act, 10 U.S.C. § 331 et seq.

☐ Determine your role in advising the governor regarding whether to seek federal assistance and, when necessary, in coordinating with federal authorities.

☐ If the state seeks federal assistance, determine whether the current conditions meet the statutory requirements under the Stafford Act.

☐ Determine whether the President might act on his/her own to implement a federal response:

- Under the Stafford Act, the President may act if response is likely to be the “primary responsibility” of the federal government, 42 U.S.C. § 5191.
- Under the Insurrection Act, the President may use militia or armed forces in certain situations, 10 U.S.C. § 333.

☐ Familiarize yourself with the procedures for operations under the National Response Framework (NRF) and National Incident Management System (NIMS).

- Ensure that appropriate office personnel are familiar with the state’s Emergency Operations Plan and the Emergency Support Functions.
- Determine whether the office can or has a responsibility to establish security at a site, restrict air traffic, manage traffic patterns, patrol communities, resolve and manage law enforcement shortages and allocation issues, or deploy law enforcement or prosecutor personnel to assist local personnel.

☐ Determine if the state’s county and municipal water quality codes and standards satisfy FEMA requirements and whether they have been enforced consistently prior to a disaster so as to be eligible for FEMA funding after a disaster.

☐ Consider whether the state should seek federal military or law enforcement assistance.

- Determine whether the state will apply for aid under the Emergency Federal Law Enforcement Assistance Act, 42 U.S.C. § 10501.
- Review the limits on military assistance under the Posse Comitatus Act, 18 USC §1385.
- Consider whether the state’s National Guard units should be federalized or remain under state control.
- Review other limits on federal assistance, including the anti-commandeering doctrine.
- If there is an ongoing national security threat, determine what the procedures are for sharing intelligence information with federal agencies and what your role is in this collaboration.

MISSION/LEGAL

Federal Emergency Management Agency (FEMA)

☐ Identify the lead legal advisor to the administration on post-disaster FEMA matters.

☐ If your office is the main legal advisor, develop relationships within the state with emergency management personnel, the governor's office, the administration, and general counsel that will facilitate communication and action after a disaster.

☐ Establish a system to track all documents related to open accounts and ongoing efforts, as well as past efforts, in order to be prepared for a FEMA audit.

- Understand what level of confidentiality must be preserved with these types of documents and what the state's potential liability may be under these confidentiality requirements.

☐ Brief employees on how to record their hours, materials, and other reimbursable expenses correctly so that they can ensure the state is reimbursed by FEMA.

- Create a checklist of what needs to be tracked, or what can be reimbursed by FEMA.
- Ensure that the correct organization or agency is applying for FEMA assistance.

☐ Send employees to FEMA trainings where possible.¹

- Establish a FEMA point person that you can rely on to update you with changes in forms or requirements.
- Check annually to make sure your FEMA point person is still willing and able to provide that information.
- Have employees regularly attend policy, program meetings, and tabletop exercises with FEMA and/or your state Emergency Management Office.

☐ Consult with other state governments to learn from their experiences with FEMA matters.

- Plan for the possibility that legal staffing during recovery from a major disaster will take years, not months, of focused work.
- Clearly define the roles and authorities of state employees post-disaster and make sure they are understood.
- Recommend that the governor's authorized representative be close enough to the recovery work to make informed decisions quickly.
- Ensure that field workers understand the limits of their authority.

¹ For an online course catalogue of available FEMA trainings, go to <http://training.fema.gov/>.

CRIMINAL AND CIVIL

Searches

☐ There are statutes and a body of case law which allow for searches without a warrant in emergency situations. Research relevant state and federal law to determine:

- In what circumstances may a public servant go onto private property without a warrant to reduce a health or safety risk to the general population?
- Whether a public servant may go into a private home without permission to investigate such a risk?
- Under what circumstances can a public servant obtain electronic data and emails from state citizens without permission?
 - » Is there some standard equivalent to “probable cause” or “plain view” that must be met before this is done, or is there some sort of administrative order or warrant that must be issued?
 - » Can an emergency reach the level of “exigent circumstances” allowing for immediate search or seizure and, if so, under what circumstances?

Electronic Surveillance

☐ Research the legal issues surrounding electronic surveillance for security reasons in a state of emergency.

- What factors allow for such surveillance? For example, *Katz v. United States*, 389 U.S. 347 (1967), allows for warrantless surveillance in certain circumstances relating to foreign threats but not domestic threats.
- What due process challenges to government action are afforded in a time of emergency? If court access is suspended, when is it reinstated?

Evacuations

☐ Research the legal issues surrounding mandatory or recommended evacuations, such as of prisons, mental institutions, and of other people for whom the state is responsible.

- Is there a triage system in place to determine the method of evacuation?
- What legal circumstances require population evacuations in your jurisdiction?
- What grounds for evacuation are required and what documentation, if any, will be necessary?
- What legal requirements will apply when allowing reentry to evacuated areas at the conclusion of the crisis?
- What are the legal issues relating to those who refuse to comply with evacuations?

☐ Be prepared to deal with legal issues arising from an influx of evacuees from other states.

- Are there separate provisions for overflow issues in jails and prisons which specify modes of transfer and prevention of overflow?

Quarantine and Medical Emergencies

☐ Familiarize yourself with your state’s provisions relating to quarantine:

- What circumstances can lead to an enforced quarantine and when is it lifted?
- There are laws prohibiting forced medical procedures, with very few exceptions. Are there exceptions in certain emergencies such as pandemics? What procedures are involved?
 - » Possible issues may include mandatory vaccinations, mandatory medical examinations, and treatment of persons or animals carrying disease.

CRIMINAL AND CIVIL

- What are the laws relating to disclosure of medical information?
- Do state laws require health professionals to assist in emergencies?

Police Powers

Determine which, if any, police powers are extended in times of emergency and what the limits are on those powers. Familiarize yourself with the checks on police misconduct, including the courts, which may also be affected by an emergency.

- ☐ Detention in times of emergency:
 - Are there laws allowing for temporary detention of looters?
 - What are the issues related to racial and ethnic profiling in relation to a security threat?
 - Does the state have laws allowing for the establishment of temporary detention facilities? If so, what conditions, such as adequate health care, water, power, and plumbing, must be met?
 - Are there temporary facilities established in preexisting locations or are they created ad hoc based on the nature of the emergency? Are the locations known or subsequently publicized to law enforcement agencies?
- ☐ Treatment of detained individuals in emergency situations:
 - What due process/court access rights do detained individuals have during a time of emergency?
 - If these rights are suspended, when are they reinstated?

- ☐ Stop-and-frisk in times of emergency:
 - What would amount to reasonable suspicion? For example, may similar forms of pat-downs as those applicable to air passengers be used in order to prevent weapons entering temporary housing?
 - Are there special provisions for weapons restrictions or limitations on possession of firearms in an emergency?
- ☐ Determine whether and under what circumstances curfews maybe initiated and how a curfew will be enforced.
- ☐ Actions of police officers in emergency scenarios:
 - Possible issues may include “shoot to kill” policies, identity checks, and enforcing of temporary restraining orders.
 - May police limit access to public spaces?

Out-of-State Assistance

- ☐ Determine what steps must be taken to bring in federal, interstate, and military assistance, if needed.
- ☐ Research legal issues from such assistance, including: differing qualifications/credentials, use of both state and out-of-state personnel, command and control of units and “self-deployed” individual officers, and private security personnel.
- ☐ Examine the tools that may be at the federal/state/National Guard’s disposal.

CRIMINAL AND CIVIL

Protecting Minorities and Vulnerable Groups

- ☐ Determine whether provision of aid to Native American reservations will create issues for law enforcement or safety agencies.
- ☐ Determine in advance how to address legal issues in protecting vulnerable communities from threats which might increase during emergencies, such as carjacking, murders, rapes, and thefts.
- ☐ During and after an emergency, ensure that lack of policing/oversight does not foster an environment for human trafficking.

Courts and Legal Proceedings

- ☐ Research whether and under what circumstances courts may be closed.
- ☐ Develop a process within the office for preservation of evidence and records.
- ☐ Determine whether there is an emergency clause that affects the statutory requirement for criminal cases to go forward in a specified number of days.
- ☐ Research legal provisions for access to public records during states of emergencies.
- ☐ Determine how your office will deal with multiple or expensive tort claims and large settlements stemming from a disaster for which the state is legally responsible.

CIVIL RIGHTS

Service Referrals

☐ Work with other state officials to create a referral network for disaster survivors who need assistance with the following: finding shelter or affordable housing; obtaining legal representation in the context of eviction proceedings; ensuring children's continued access to school; applying for disaster-related benefits; accessing any necessary social services; and other needs.

Equitable Distribution of Disaster Recovery Funds

☐ Advise state government on ensuring disaster recovery funds are made available in a non-discriminatory manner that equally benefits all communities.

“Source of Income” Discrimination

☐ If there are state or local laws that prohibit landlords from refusing to rent to disaster victims on the basis of source of income, determine how your office will be involved in enforcing these laws.

Voting

☐ Research statutory provisions for addressing election-related problems that may arise during an emergency, including: polling places closed as a result of or impacted by damage; polling places moved to a new location; provisions for facilitating participation by absentee ballot; and relaxed deadlines for submitting absentee ballots.

☐ Determine the circumstances under which elections can be postponed and when a postponed election must take place.

Language Barriers

☐ Ensure that all publications and public announcements produced by the attorney general are made available to non-English and limited English-proficient speakers by translating materials and making interpreters available.

Shelters

☐ If the state creates temporary housing for evacuated individuals, determine what conditions must be met, such as the provision of adequate power, food, medical care, plumbing facilities, and accessibility to individuals with disabilities.

☐ Determine whether your office will establish a physical presence at shelters.

PROPERTY

Takings

- ☐ Research the following questions about takings:
 - Do state agencies have immunity from takings claims either during or following an emergency? Does your state have a broad immunity standard?
 - What is required to avoid inverse condemnation claims?
 - At what point after a disaster can a claim for continuous trespass arise?
 - If it is necessary to condemn private property, real or personal, in order to alleviate a threat to public health or safety, what evidence or showing is required?
 - Is it legal to require demolition of private residences or other buildings for public purposes in an emergency? What constitutes an emergency in this context? What procedural safeguards must be followed? What non-legal considerations should be given weight?
 - Following an emergency, is notice of condemnation of private property required and, if so, how much notice must be given? How much time must pass after the emergency for the requirement to be lifted? See *WWIBTV, Inc. v. Village of Rouses Point*, 589 F.3d 46 (2d Cir. 2009).
 - Does your state have a version of the Model State Emergency Health Powers Act?
 - Does your state have a constitutional provision requiring compensation for merely damaging property?

Police Power Authority Related to Infrastructure Protection

- ☐ Determine whether police can protect and control access to infrastructure via exercising authority to search vehicles, detain people, or use other methods to limit access to public buildings; transportation facilities, including bridges, tunnels, train, bus, and subway; water processing facilities; electrical and gasoline; and other areas or systems.

Insurance

- ☐ Determine whether your state has an excess insurance policy that covers property or other losses as a result of a disaster, and whether it has been reviewed periodically to ensure monetary limits are sufficient, coverage is appropriate, and terms are clear.

CONSUMER PROTECTION

- ☐ Establish a process to inform the general public, local government, and law enforcement agencies about the potential for acts that violate consumer fraud laws.
 - Identify state statutes that are the best tools to counter fraudulent schemes.
 - Identify other state agency officials or attorneys who can help or be contacted with questions.
- ☐ Utilize the **National Center for Disaster Fraud (NCDF)**. Their hotline is 866-720-5721.
- ☐ Be prepared to deal with the consumer protection issues that may be raised by commandeering laws.
 - Plan locations to physically interact with citizens on consumer complaints and determine how they will be staffed.
 - Determine whether state law allows the emergency suspension of the sale of specified consumer products and whether there are other constitutional or federal law limitations on the power to do so.
- ☐ Make consumer complaint forms available through your website.
 - Pre-distribute or post such forms in affected disaster areas.
 - Plan how you will physically transport complaint forms to affected areas.
- ☐ Establish a recordkeeping system to ensure against duplicate prosecution efforts, to ensure that class action suits can be brought at a later date, and that attorneys can be reimbursed by FEMA.
- ☐ Set up an internal task force to handle consumer complaints.
 - Assign employees to investigate complaints and to serve as a focal point of media interest in connection with announcement of enforcement efforts.

- ☐ Ensure that your consumer messages and response efforts are synchronized with developing problems, keeping in mind, for example, that while price gouging, looting, and relief scams proliferate early on, home repair and improvement fraud occurs later in the recovery phase.

Price Gouging

- ☐ Familiarize yourself with your price gouging statute and related case law, including:
 - How is the price gouging statute triggered? Are there different ways it can be triggered, as well as different ways it is implemented based on how it is triggered? Ensure the attorney general's understanding of these questions matches that of the governor and governor's counsel.
- ☐ Determine if the price gouging statute applies differently for items such as hotel rooms as opposed to goods and gas brought into the area.
- ☐ Develop pricing guidelines for typical goods and services necessary post-disaster.
- ☐ Prepare a list of special questions to be included in a subpoena for an investigation into price gouging.

Home Repair and Improvement Fraud

- ☐ If your state has a statute providing for a “cooling-off period” after entering into contracts, determine if that statute applies differently in an emergency.

CHARITIES

- ☐ Ensure that you have people in your office specifically trained to deal with issues that will arise with charities post-disaster, including the issues of donor protection from bogus charities and determining and effectuating donor intent.
- ☐ Disseminate information on good donation practices and make available resources that provide information on vetted charities or that aid donors in finding charities for donation.
- ☐ Establish a dedicated telephone number to provide information regarding charity scams and make this number available on your website as well as posting it in the affected disaster areas.
- ☐ Use the attorney general's oversight duties to ensure charities are operating honestly and fairly according to their mission and not against public interest.
- ☐ Put in place a system or protocol to deal with the issue of money donated directly to the state government and the attendant distribution issues that can arise post-disaster.
- ☐ Encourage charities to track their goods in order to prevent double counting of donations.

LABOR

Application and Suspension of Federal Labor Laws

☐ Determine whether a federal emergency or disaster has been declared that implicates waiver, suspension, or exceptions to federal labor laws and whether the state will request suspension of any federal labor or employment laws.

☐ Prepare your office to advise or refer employers/employees seeking clarification of their obligations and rights under federal labor laws in an emergency. This may include:

- Fair Labor Standards Act (FLSA)
- Family and Medical Leave Act (FMLA)
- Worker Adjustment and Retraining Notification (WARN) Act
- Americans with Disabilities Act (ADA)
- Occupational Safety and Health Act (OSHA)
- National Labor Relations Act (NLRA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Davis-Bacon Act
- Disaster Unemployment Assistance (DUA)
- Taft-Hartley Act

Application and Suspension of State Labor Laws

☐ Determine whether declaration of a state emergency triggers any automatic suspensions/waivers/exceptions/rights under labor laws.

☐ Determine whether your state will seek to suspend any state labor or employment laws, including: prevailing wage, overtime, workplace health and safety, collective bargaining, labor strikes, employee misclassification, WARN Acts, and building permitting.

☐ Research the following issues:

- Are employers required to pay any classes of employees if the employer is unable to provide work during an emergency?
- Does your state provide any assistance or benefits to workers who are unable to work due to the nonoperation of their place of employment during, or as the result of, a disaster/emergency?
- Does your state set limits on an employer's right to remain open for business or to demand that employees come to work during a declared emergency?
- Are employers potentially liable for an injury resulting if they require an employee to come to work during a state of emergency?
- May an employer require an employee to telecommute during an emergency?
- Is an employer required to pay any employees for time during which the employee was "on call" but not working during an emergency?
- Does state law require employers to give employees warning of a planned business closure or significant reduction in force that may occur in the long-term aftermath of a disaster?
- Are employees who suffer health conditions as a result of a disaster, or care for a family member suffering from such a health condition, permitted to take leave from employment?
- Are employees injured as a result of a disaster entitled to any accommodation by the employer?
- Are employers responsible for employee health and safety in the workplace during a disaster and are they required to prepare emergency action/response plans?
- Does your state provide employment protections to part-time emergency service personnel who are late or absent from other employment due to execution of their emergency service duties?

LABOR

- Does your state set limitations on an employer's right to fire an employee who is unable to work due to a disaster, or offer benefits to such a terminated employee?
- Does your state permit law enforcement to require businesses to close during an emergency?

☐ Help develop materials for employers advising them how to prepare for and respond to an emergency, such as how to identify essential employees, develop communication and contingency plans, review applicable leave policies, review any employee assistance programs, and ensure employees understand and are able to access them, as well as emphasize that human life and safety trumps all other business necessities.

Union-Related Issues

- ☐ Research the following union-related issues:
- Can union laws be suspended in an emergency?
 - Might employers be subject to particular requirements in a disaster under state labor relations laws or a collective bargaining agreement?
 - Does the state play a role in mediating disputes over emergency provisions in union contracts regarding overtime, part-time/temporary employees, hazard pay, or other provisions that may create conflict in an emergency?
 - Does the state have the power to interfere with a strike or work stoppage that would cause or exacerbate an emergency during a disaster?
 - Are employees entitled to any protection under state labor relations laws?

Non-Local or Immigrant Labor

☐ Determine whether the state may take any steps to track or respond to any influx or reduction of temporary/non-local/immigrant laborers.

☐ Develop a plan to work cooperatively with employers, workers' groups, and legal organizations to educate employers and non-local workers as to their rights and obligations.

☐ Determine how the state will ensure that non-local workers receive promised pay, health and safety precautions, access to medical treatment, and other workplace protections.

☐ Work with local law enforcement to foster trust with non-local/immigrant laborers to ensure they are willing to approach and assist law enforcement.

☐ Assist local law enforcement to prepare to deal with non-local businesses and workers in the disaster area and potential conflict between non-local and local persons/communities.

Volunteers

☐ Prepare to respond to issues regarding volunteers, including:

- Does state or federal law apply to prevent businesses from augmenting their workforce with volunteers during an emergency?
- Does state or federal law allow the use of volunteers by certain private, nonprofit organizations?
- Are there liability issues of which volunteers and those utilizing volunteers must be made aware?
- Will the state utilize a centralized donation/volunteer management system?

ENVIRONMENT

Suspension of Federal Environmental Laws

Federal environmental laws and regulations may be waived or suspended upon request by the governor once a state of emergency has been declared.

- ☐ Determine whether your office is responsible for aiding the governor to request waivers and develop resources to assist in quickly determining which waivers to seek.
- ☐ Determine how the resumption of requirements will be publicized/made known to businesses and the public when the suspended laws go back into effect.
- ☐ Determine how the long-term effects of the suspension of laws will be treated for liability purposes; for example, run-off of contaminated waters occurring with the first rainfall after the resumption of previously suspended environmental laws.

State Laws

- ☐ Determine whether the governor will seek to temporarily suspend environmental laws by executive order in the event of a disaster or emergency and whether state agencies have separate statutory or regulatory authority to suspend laws during emergencies.

Recovery

- ☐ Ensure your office is aware of potential state liability that may arise from structural failures, agency action, or inaction; for example, a failure of manmade structures such as reactors, levies, or derricks.
- ☐ Determine whether there are laws that would confer liability on a state agency for actions of volunteers who are cleaning the environment.
- ☐ If your office has a role in ensuring the appropriate disposal of waste, determine what is required to protect the state from liability while disposing of waste that could harm the environment, as well as liability from hazardous materials, biohazardous materials, or toxic substances.
- ☐ Assess recovery plans for waste disposal to see if they potentially give rise to takings or other claims such as nuisance.
- ☐ Determine what liability exists for overloaded facilities.

APPENDIX

Below is a list of downloadable resources that are available on the NAAG website.

Charities

- **A Lesson of Sandy Hook: ‘Err on the Side of the Victims’**, *New York Times*
- **Charity Checklist**, *Connecticut*
- **Resource and Recovery Guide Post-Boston Marathon Bombing**, *Massachusetts*
- **Sandy Hook Charities Report**, *Connecticut*
- **Charities Disaster Relief Guide**, *Connecticut*
- **The Role of State Charities Regulators in Protecting Public Trust in Charitable Responses to Disaster**, *Connecticut*

Contractors

- **Missouri Senate Bill 101**, *Missouri*
- **Contractor Checklist**, *Nebraska*

Post Incident Review

- **Independent Review of the 2017 Protest Events in Charlottesville, Virginia**, *Virginia*
- **Governor’s Task Force Report on Charlottesville**, *Virginia*
- **Prohibiting Private Armies at Public Rallies**, *Georgetown Law*
- **Permitting Reference Document**, *Virginia*

Materials For Distribution to Public

- **Eye on the Storm Hurricane Preparedness Guide**, *Florida*
- **No Scam One Pager**, *Florida*
- **Press Release: Attorney General Laxalt Expands Coalition of Attorneys General Offices Assisting Las Vegas Victims**, *Nevada*
- **Donating with Care Checklist**, *Nebraska*
- **Press Release Posted to Social Media by Attorney General Doug Peterson**, *Nebraska*

Preparing State Attorneys General Offices for a Disaster

- **RFQ for Price Gouging App**, *Florida*
- **NAAG Mass Violence Checklist**, *NAAG*



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