



# Emergency Doctrine



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New York State recognizes the need for authorized emergency vehicles to respond immediately to emergency situations. Vehicle and Traffic Law §1104 provides operators of emergency vehicles, such as ambulances, police cars, fire trucks and other governmental authority vehicles, with qualified protection from liability stemming from injuries to third parties when responding to an emergency situation.

However, this rule is not absolute and its application will depend on whether the drivers are engaged in certain categories of privileged conduct. This determination, in turn, will decide whether the driver receives an ordinary "due care" standard or the more protective "reckless disregard" charge.

As described in detail below, the recent Court of Appeals decision in *Kabir v. County of Monroe*, 16 N.Y.3d 217, 945 N.E.2d 461 (2011) determined that the "reckless disregard" standard, as opposed to an ordinary "due care" standard, only applies when drivers of emergency vehicles are engaged in one of the four specific categories of privileged conduct enumerated in the Statute.

## STANDARD FOR EMERGENCY VEHICLES

Vehicle and Traffic Law §1104(a) provides that drivers of "an authorized emergency vehicle" involved in "an emergency operation" do not have to comply with certain traffic rules and regulations when faced with such emergencies.

As defined in Vehicle and Traffic Law §101, "emergency vehicles" include the following:

ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, blood delivery vehicle, county emergency medical services vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordnance disposal vehicle of the armed forces of the United States.

Additionally, as defined in Vehicle and Traffic Law §114-b, an "emergency operation" includes the following:

The operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency. Emergency operation shall not include returning from such service.

In these cases of emergency, Vehicle and Traffic Law §1104 provides that the drivers of emergency vehicles are exempt from compliance with certain traffic laws. As the following sections of §1104 demonstrate, a driver of an emergency vehicle, who is utilizing its sirens and lights, can exceed the speed limit, stop, stand or park where needed, proceed through red traffic lights and stop signs and disregard regulations with regard to direction of traffic.

Vehicle and Traffic Law §1104(a) and §1104(b) provides the following:

- (a) The driver of an authorized emergency vehicle, when involved in an emergency operation, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
- (b) The driver of an authorized emergency vehicle may:
  - Stop, stand or park irrespective of the provisions of this title;
  - Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;
  - Exceed the maximum speed limit so long as he

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does not endanger life or property;

- Disregard regulations governing directions of movement or turning in specified directions.

However, certain procedures must be followed in order for the privileges stated above to apply. Specifically, pursuant to Vehicle and Traffic Law §1104(c), the emergency vehicle's "audible signals" must be sounded" while the vehicle is in motion "by bell, horn, siren, electronic device or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp so that from any direction, under normal atmospheric conditions from a distance of five hundred feet from such vehicle, at least one red light will be displayed and visible."

However, immunity from suit in situations involving an emergency vehicle responding to an emergency situation is not absolute. Vehicle and Traffic Law §1104(e) provides the following:

The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

## PRIOR PRECEDENT

Based on the language stated in Vehicle and Traffic Law §1104(e), which uses both "due regard" and "reckless disregard" language to define the applicable standard of care, a main inquiry in emergency situation cases is whether a "reckless disregard" standard or an ordinary "due care" standard applies to drivers of emergency vehicles.

Prior to the Court of Appeals decision in *Kabir v. County of Monroe*, 16 N.Y.3d 217, 945 N.E.2d 461 (2011), there was a question with regard to the duty of care applicable to drivers of emergency vehicles.

In *Saarineen v. Kerr*, 84 N.Y.2d 494, 620 N.Y.S.2d 297 (1994), the Court of Appeals determined that although the statute makes reference to both "due regard" and "reckless disregard" standards, the Court found that a "reckless disregard" standard would apply to drivers of emergency vehicles.

In *Saarineen*, a Village police officer was pursuing a suspect's vehicle when the suspect's vehicle collided with the plaintiff. The Court found that as a matter of law the police officer's actions did not rise to the level of reckless disregard for the safety of others.

Significantly, as pointed out by the Court of Appeals in *Kabir*, the Court of Appeals in *Saarineen* applied the reckless disregard standard irrespective of an analysis as to whether the specific action that caused the plaintiff's injury was privileged under Vehicle and Traffic Law §1104(b). As a result, this left an ambiguity in the law which the Court of Appeals would revisit in *Kabir*.

## KABIR

In *Kabir v. County of Monroe*, 16 N.Y.3d 217, 945 N.E.2d 461 (2011), a Monroe County deputy sheriff was responding to a possible burglary when he momentarily took his eyes off the road in order to consult the data terminal in his vehicle. While glancing at the data terminal, he rear-ended the plaintiff's vehicle. At the time of the accident, the police officer did not have the emergency vehicle's lights or sirens activated and was traveling below the posted speed limit.

As a matter of first impression, the Court of Appeals determined the main question that was left open in *Saarineen*: what specific actions or types of conduct are privileged under Vehicle and Traffic Law §1104 and thus subject to the reckless disregard standard. In a 4 to 3 decision, Justice Read determined that the "reckless disregard" standard **only** applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific four categories of privileged conduct listed in Vehicle and Traffic Law §1104(b). The four activities include: (i) stopping, standing or parking irrespective of the provisions of this title; (ii) proceeding past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation; (iii) exceeding the maximum speed limit so long as it does not endanger life or property; and (iv) disregarding regulations governing directions of movement or turning in specified directions. Since the driver of the authorized emergency vehicle involved in an emergency operation engaged in conduct not specifically listed in Vehicle and Traffic Law §1104(b) – he was not speeding, was not running a red light and did not have the car's sirens activated – The Court of Appeals held that an ordinary negligence standard would apply.

## EFFECTS OF KABIR

As pointed out by Justice Graffeo in the dissent, the new standard set forth in *Kabir* awkwardly shifts

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how emergency vehicles are defended in such actions. As stated by Justice Graffeo, "[t]he majority's new rule is also inconsistent with the public policy underlying section 1104 because it creates an unjustifiable immunity only to police, fire or ambulance personnel who speed, run a red light or violate a handful of other traffic laws while responding to emergency calls." Thus, Justice Graffeo asserted that a "perverse effect" is created by "encouraging conduct directly adverse to the public policy of requiring emergency responders to exercise the utmost care during emergency operations."

As such, to defend an emergency vehicle in such actions, one would focus on how the driver of the emergency vehicle sped, ran red lights or engaged in one of the other specified traffic infractions listed in Vehicle and Traffic Law §1104 so that a higher "reckless disregard" standard would apply. Otherwise, as asserted by the dissent in *Kabir*, "[p]olice officers, firefighters or ambulance drivers who manage to obey traffic signals or travel within the speed limit are out of luck if they are involved in an accident."

### FUTURE OF EMERGENCY VEHICLE CASE LAW

The standard set forward in *Kabir* appears simple: a higher "reckless disregard" standard applies if the operator of an emergency vehicle was engaged in the specified conduct listed in Vehicle and Traffic Law §1104(b) and an ordinary negligence standard applies to all other conduct.

However, the bright line rule will not always produce fair and practical results. For example, in *Kabir*, the police officer was traveling below the listed speed limit and was charged with an ordinary negligence standard. If the same police officer were traveling slightly over the listed speed limit, the police officer would be charged with a "reckless disregard" standard and not be subject to liability.

Thus, lower courts will now have to scrutinize the facts of each and every matter to determine what exact conduct the driver of an emergency vehicle was engaged in at the time of the accident in order to determine which standard will apply. From a defense point of view, a careful analysis must be made in order to determine if the driver of emergency vehicle was engaging in specific privileged conduct as specified in Vehicle and Traffic Law §1104 so as to be held to a "reckless disregard" standard.