# 9.20 Particular Rights—Fourth Amendment—Unreasonable Seizure of Person—Generally

 As previously explained, the plaintiff has the burden of proving that the act[s] of the defendants deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendant deprived [him] [her] [other pronoun] of [his] [her] [other pronoun] rights under the Fourth Amendment to the Constitution when [*insert factual basis of the plaintiff’s claim*].

 Under the Fourth Amendment, a person has the right to be free from an unreasonable seizure of [his] [her] [other pronoun] person. In order to prove the defendant deprived the plaintiff of this Fourth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

First, the defendant seized the plaintiff’s person;

Second, in seizing the plaintiff’s person, the defendant acted intentionally; and

Third, the seizure was unreasonable.

 A defendant “seizes” the plaintiff’s person when [he] [she] [other pronoun] restrains the plaintiff’s liberty through coercion, physical force, or a show of authority. A person’s liberty is restrained when, under all of the circumstances, a reasonable person would not have felt free to ignore the presence of law enforcement officers and to go about [his] [her] [other pronoun] business.

 In determining whether a reasonable person in the plaintiff’s position would have felt free to leave, consider all of the circumstances, including:

1. the number of officers present;

2. whether weapons were displayed;

3. whether the encounter occurred in a public or nonpublic setting;

4. whether the officer’s manner would imply that compliance would be compelled; and

5. whether the officers advised the plaintiff that [he] [she] [other pronoun] was free to leave.

 [A person acts “intentionally” when the person acts with a conscious objective to engage in particular conduct. Therefore, the plaintiff must prove that the defendant intended to [*insert*

*the factual basis for the plaintiff’s claim*]. It is not enough to prove that the defendant

negligently or accidentally engaged in that action. But while the plaintiff must prove that the

defendant intended to act; the plaintiff need not prove that the defendant intended to violate the

plaintiff’s Fourth Amendment rights.]

**Comment**

 Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8, and with an appropriate definition of an unreasonable seizure such as Instructions 9.21–9.25.

 The Fourth Amendment protects “against unreasonable searches and seizures.” U.S. Const. amend IV. “A ‘seizure’ triggering the Fourth Amendment’s protections occurs only when government actors have, ‘by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen.’” *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (omissions in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). This may occur through coercion, physical force, or a show of authority. *United States v. Chan-Jimenez*, 125 F.3d 1324, 1326 (9th Cir. 1997). A person’s liberty is restrained when, “taking into account all of the circumstances surrounding the encounter, the police conduct would ‘have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.’” *Florida v. Bostick*, 501 U.S. 429, 437 (1991); *see also Dees v. County of San Diego*, 960 F.3d 1145, 1154 (9th Cir. 2020) (holding that a seizure occurs if, in view of all circumstances surrounding incident, a reasonable person would have believed she was not free to leave).

A seizure requires the use of force with an intent to restrain. The Supreme Court has defined a seizure of a person as “a governmental termination of freedom of movement *through means intentionally applied*.” *Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original); *see also* *Torres v. Madrid,* 592 U.S. 306, 317 (2021) (“A seizure requires the use of force with intent to restrain. Accidental force will not qualify.”); *Brendlin v. California*, 551 U.S. 249, 254 (2007). Thus, this instruction includes an optional definition of the term “intentionally” for use when it would be helpful to the jury. “[A] passenger struck by a bullet intended to stop the driver of a vehicle” has been seized. *Villanueva v. California*, 986 F.3d 1158, 1165 (9th Cir. 2021). In *Sanderlin v. Panighetti*, the Ninth Circuit held that the defendant seized the plaintiff when he “intentionally applied physical force, and as a result, [the plaintiff’s] ‘freedom of movement [was] restrained.’” 116 F.4th 905, 912 (9th Cir. 2024) (citation omitted). It did not matter that the defendant’s incapacitation of the plaintiff was limited in duration nor was it relevant that the plaintiff was able to walk away. *Id.* Further, the method of force that the defendant used—firing foam batons—incapacitated its target, and a reasonable trier of fact could conclude that by firing a projectile at plaintiff, the defendant objectively manifested an intent to restrain the plaintiff. *Id.* The defendant’s subjective intent was irrelevant. *Id.*

A seizure, however, “does not occur simply because a police officer approaches an individual and asks a few questions.” *Bostick,* 501 U.S. at 434; *accord United States v. Brown*, 996 F.3d 998, 1005 (9th Cir. 2021). The general rule is that “a person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (“characterizing every street encounter between a citizen and the police as a ‘seizure,’ while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices”); *see also Dees*,960 F.3d at 1154 (holding that a seizure occurs if, in view of all circumstances surrounding incident, a reasonable person would have believed she was not free to leave). In addition, a seizure “requires either physical force … or, where that is absent, submission to the assertion of authority.” *California v. Hodari D*., 499 U.S. 621, 626 (1991); *Hill v. City of Fountain Valley*, 70 F.4th 507, 514 (9th Cir. 2023) (“Put another way, if a plaintiff did not comply with an officer’s orders, then the officer did not seize the plaintiff.”). Attempted seizures are not protected by the Fourth Amendment. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 n.7 (1998) (“Attempted seizures . . . are beyond the scope of the Fourth Amendment.”); *Cuevas v. City of Tulare*, 107 F.4th 894, 899 (9th Cir. 2024) (holding that a driver was not seized when the driver’s vehicle became stuck in the mud on the roadside as driver attempted to flee a felony stop but was seized when officer put police canine through broken window of vehicle, instructing canine to bite driver, and when officers fired at driver after driver shot the canine and his handler). An “application of force with an objective intent merely to *disperse or exclude* persons from an area—and without any measures objectively aimed at detaining or confining them in the process—does not involve the necessary ‘intent to restrain’ that might give rise to a ‘seizure.’” *Puente v City of Phoenix*, 123 F.4th 1035, 1052 (9th Cir. 2024) (emphasis in original) (holding that the use of chemical irritants to disperse a crowd did not constitute a seizure because there was no basis in the record for concluding that it was undertaken with the necessary objective intent to restrain).

 In determining whether a reasonable person would have felt free to ignore police presence, the Ninth Circuit considers five factors: “(1) the number of officers; (2) whether weapons were displayed; (3) whether the encounter occurred in a public or nonpublic setting; (4) whether the officer’s officious or authoritative manner would imply that compliance would be compelled; and (5) whether the officers advised the detainee of his right to terminate the encounter.” *United States v. Brown*, 563 F.3d 410, 415 (9th Cir. 2009) (quoting *United States*

*v. Washington*, 387 F.3d 1060, 1068 (9th Cir. 2004)). In *Morgan v. Woessner*, 997 F.2d 1244 (9th Cir. 1993), the Ninth Circuit explained that “stops” under the Fourth Amendment fall into three categories:

First, police may stop a citizen for questioning at any time, so long as that citizen recognizes that he or she is free to leave. Such brief, “consensual” exchanges need not be supported by any suspicion that the citizen is engaged in wrongdoing, and such stops are not considered seizures. Second, the police may “seize” citizens for brief, investigatory stops. This class of stops is not consensual, and such stops must be supported by “reasonable suspicion.” Finally, police stops may be full-scale arrests. These stops, of course, are seizures, and must be supported by probable cause.

*Id.* at 1252 (citations omitted).

 Section 1983 “contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right.” *OSU Student All. v. Ray*, 699 F.3d 1053, 1071-72 (9th Cir. 2012) (citing *Daniels v. Williams*, 474 U.S. 327, 328 (1986)). It is well settled that “negligent acts do not incur constitutional liability.” *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002), *abrogated on other grounds by County of Los Angeles v. Mendez*, 581 U.S. 420 (2017). Specific intent to violate a person’s rights “is not a prerequisite to liability under § 1983.” *Caballero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992) (holding the district court erred in instructing the jury that, in order to prevail on his § 1983 claim for false arrest, the plaintiff was required to show that the defendant specifically intended to deprive him of his constitutional rights).

In a school setting, however, “while the traditional Fourth Amendment analysis ‘is predominantly an objective inquiry,’ the ‘actual motivations’ of officers may be considered when applying the special needs” exception to the warrant and probable cause requirements of the Fourth Amendment. *Scott v. City of San Bernardino*, 903 F.3d 943, 949 (9th Cir. 2018) (affirming summary judgment in favor of the plaintiff middle school students unreasonably arrested without probable cause). A Fourth Amendment seizure of a bystander can occur when officers intentionally use force that injures the bystander. *Villanueva v. California*, 986 F.3d 1158, 1168 (9th Cir. 2021) (citing *Nelson v. City of Davis*, 685 F.3d 867, 876 (9th Cir. 2012)).

No separate instruction is provided for a child’s claim for unreasonable removal by social workers. Such action may violate the child’s Fourth Amendment rights if the child is removed in the absence of either a warrant or exigent circumstances. *See, e.g., Kirkpatrick v. County of Washoe*, 843 F.3d 784, 790-91 (9th Cir. 2016) (en banc) (holding that government official may take child away from parents’ home without judicial authorization only “when officials have reasonable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant”); *see also Demaree v. Pederson*, 887 F.3d 870, 878 (9th Cir. 2018) (“There are narrow circumstances in which the government may constitutionally remove children from their families temporarily without judicial authorization.”); *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007) (stating the facts did not support an imminent risk of serious bodily harm, and therefore, a warrant was required).

A parent may also be able to assert a Fourteenth Amendment claim in such circumstances for interference with the parent–child relationship. *See* Instruction 9.32 (Particular Rights—Fourteenth Amendment—Due Process—Interference with Parent/Child Relationship).

If the court is able to determine as a matter of law that the plaintiff was seized, the Committee recommends the court instruct the jury accordingly and omit the portions of this instruction that define a seizure.

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