



michigan municipal league

## Law Enforcement Action Forum Newsletter

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### Officers Are No Help If They Crash Going To An “Emergency”!

Establishing Accountability For Decision Making Can Reduce Losses.

By Gene King, Law Enforcement Action Forum Coordinator



**Michigan Law:** An undefined statutory term must be accorded its plain and ordinary meaning. A lay dictionary may be consulted to define a common word or phrase that lacks a unique legal meaning. MCL 8.3a; also *People v Thompson*, 477 Mich 146, 151; 730 NW2d 708 (2007).

#### Emergency Defined:

Merriam-Webster Dictionary - Emergency: An unforeseen combination of circumstances or the resulting state that calls for immediate action.

Black’s Law Dictionary – Emergency: Situation requiring immediate attention and remedial action.

#### Operating a Vehicle in Emergency Response Is Considered a High Frequency/High Severity Job Task

##### Scenarios:

1. It is late evening and a neighboring department dispatches an officer to a domestic reportedly involving a fight with weapons. The dispatched officer asks for back up and your officer is assigned. Your officer communicates with the other officer and finds out he is relatively close to the address. Dispatch reports the wife is calling again while she is hiding in the bathroom. The dispatcher can hear the husband pounding on the door and yelling.
2. Your department dispatches an officer to an incident in which a neighbor saw a subject walk down the driveway of a house that has no lights and then heard glass break. The neighbor believes the people who live there are not home.
3. Dispatch broadcasts that store security is chasing a subject who stole a large screen TV from the store. Dispatch reports that when security tried to stop the subject, others involved in the theft assaulted them. One of the security officers jumped in to the bed of the suspect’s pickup as it sped west from the store. Store security was calling 911 from the bed of the truck screaming for help.

## Questions

Are these emergencies? Does your department policy define an emergency and how officers may respond to it? Are any controls or devices in place to supervise officers as they do this regularly performed job task? Are supervisors trained and held accountable for their responsibility to supervise and monitor this activity? Is a video audit completed on random emergency response calls to determine whether training or remediation is needed?

Have you, as top management, ever told the department what your expectations are of their actions and the discretion they have in decision making when engaged in the job task of emergency response? Are officers held accountable for the decisions they make and actions they take when engaged in operating a vehicle during an emergency response? Does the department have any idea how many emergency responses their officers make each year?

This edition of the LEAF Newsletter provides information surrounding emergency motor vehicle response and makes recommendations that will be useful to administrators, supervisors and officers in making decisions involving this high risk/high frequency job task.

## A Few Statistics

In January 2011 NHTSA's National Center for Statistics and Analysis published a study (DOT HS 811 411) entitled *Characteristics of Law Enforcement Officers' Fatalities in Motor Crashes*. The report states that between 2000 and 2008, the Fatality Analysis Reporting System reported 320 law enforcement officers (LEO) died in crashes in motor vehicles of all sorts. It also details a steady rise in LEO deaths in crashes since 2000. In the 1980's, 255 officers died, and in the 1990's the death toll was 248. Michigan rated number 15 out of all states in the most LEO fatalities from 2000 to 2008. It is noteworthy that this ranking represents a reduction of 37% over the 1980's deaths when Michigan ranked 7<sup>th</sup>. While no explanation for why this reduction in fatalities was given, an educated guess would be the introduction of vehicle design changes and additional safety equipment during this period.

Another interesting statistic is that from 1980 to 2008 only 58% of the crashes resulting in an officer fatality occurred when vehicles were traveling with physical emergency signals in use, such as red light blinking and siren sounding. Can one assume 42% of the officers killed were operating their vehicles at normal speed and flowing with traffic when they were killed?

Most officers were killed striking another vehicle. Only 33% struck a fixed object. The most frequent initial impact point was the front, at an angle, on a straight, dry road, with the crashes fairly equally distributed between urban and rural class roads. The time of the crash was relatively equal between the three traditional shift times, with a slight increase between midnight and 3 AM.

From 1980 to 2008, the driver related factor that caused the crash was almost equal between "Failing to keep in the proper lane or running off road" and "Driving too fast for conditions or in excess of posted speed limit." Of those killed, only 45% of the officers used a restraint system such as a lap and shoulder belt. Fewer officers used restraints in the 2000 to 2008 period. Air bags deployed since 1990 only 43% of the time but it should be noted that 35% of the crashes had a "Not Applicable or Unknown" report. The most at risk age for an officer to be killed by crash was the 30 to 39 years bracket.

According to the Michigan State Police, Criminal Justice Information Center Crash Statistics, in 2012, there were 1588 police, ambulance, and fire vehicle crashes. Of those, three were fatal, 349 caused injury and 1236

caused property damage. Most crashes were on local streets while going straight ahead. Amazingly, 1881 of the vehicles involved in these crashes had “None” as the hazardous action reported.

Presenting the data provides a snapshot of how crashes are happening, to whom, and where. However, why the crashes occur is not really known. Because of the consequences of their actions, officers are reluctant to fully recount what caused a crash. Investigations of crashes or reports of inappropriate behavior while driving should be fully investigated. Because of the high risk of this job task, should the investigation uncover a hazardous action or policy/rule violation, remedial training or discipline should take place if appropriate.

## The Law

In Michigan, Public Act 300 of 1949, the Michigan Vehicle Code, MCL 257.1 et seq, governs the operation of emergency vehicles. The Act outlines several requirements for establishing what an emergency vehicle is, what it can do and how the driver is responsible. Audrey Forbush, LEAF Legal Advisor of Plunkett Cooney, PC felt that, in addition to the definition of Emergency, some of the relevant statutes should be briefly outlined with sections in bold for emphasis:

### 257.2 “Authorized emergency vehicle” defined; additional definitions.

(1) “Authorized emergency vehicle” means any 1 of the following:

(a) Vehicles of the fire department, police vehicles, ambulances, privately owned motor vehicles of volunteer or paid fire fighters, ...

### 257.13 “Driver” defined.

“Driver” means every person who drives or is in actual physical control of a vehicle.

### 257.603...exemption of authorized emergency vehicles;...

(2) The driver of an authorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law may exercise the privileges set forth in this section, **subject to the conditions of this section.**

(3) The driver of an authorized emergency vehicle may do any of the following:

(a) Park or stand, irrespective of this act.

(b) Proceed past a red or stop signal or stop sign, but only after slowing down **as may be necessary for safe operation.** (Emphasis added)

(c) Exceed the prima facie speed limits so long as he or she **does not endanger life or property.**

(d) Disregard regulations governing direction of movement or turning in a specified direction.

(4) The exemptions granted in this section to an authorized emergency vehicle apply only when ... **while in motion sounds an audible signal** by bell, siren, air horn, or exhaust whistle as may be reasonably necessary, ... and when the vehicle is **equipped with at least 1 lighted lamp** displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet ... (Note: 500 ft., 360 degree visibility is required “...unless it is not advisable to equip a police vehicle operating as an authorized

emergency vehicle...”)

(5) A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required.

#### **257.632 Exemption from speed limitations; police vehicles, fire department or fire patrol vehicles, and ambulances; conditions.**

The speed limitation set forth in this chapter shall not apply to vehicles **when operated with due regard for safety under the direction of the police** when traveling in emergencies or in the chase or apprehension of violators of the law or of persons charged with or suspected of a violation... **This exemption shall apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as may be reasonably necessary** or when the vehicle is equipped with at least 1 lighted lamp displaying a flashing, oscillating or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicles, unless the nature of the mission requires that a law enforcement officer travel without giving warning to suspected law violators. **This exemption shall not however protect the driver of the vehicle from the consequences of a reckless disregard of the safety of others.**

(Emphasis Added)

#### **257.706 Horn or other warning device; siren, whistle, air horn, or bell; theft alarm signal device.**

(d) An authorized emergency vehicle may be equipped with a siren, whistle, air horn, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet, but the siren shall not be used **except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. *In those cases, the driver of the vehicle shall sound the siren when necessary to warn pedestrians and other drivers of the approach of the vehicle.***

Forbush said that the Michigan Vehicle Code statutes are very specific in defining authorization for operation as an emergency vehicle and defines the equipment that is required. In addition, Forbush pointed to the language that has been emphasized, and commented that officers need to be aware that the statutes hold driver's specifically responsible for the safety of others in addition to requiring them to sound a siren unless the conditions under 257.603(5) can be met.

She said the statutes establish the basis for how the officer's actions are analyzed and judged while driving in an emergency. If the outcome is a crash or because the actions of the officer caused another to crash or be injured, the evaluation will include the Vehicle Code plus other criminal and civil standards of law.

#### **Governmental Immunity and Officer Responsibility**

Forbush said that all governmental agencies exercising or discharging a governmental function have governmental immunity from tort liability, with some exceptions (MCL 691.1407). She went on to emphasize that one of those exceptions to immunity is the Motor Vehicle Exception. She points out that MCL 691.1405 states "Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner."

Individual officers are granted immunity under MCL 691.1407 (2) if their actions meet three conditions:

- (a) The ... employee ... is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The ... employee's ... conduct does not amount to *gross negligence* that is *the proximate cause* of the injury or damage.

*Gross negligence* is defined in MCL 691.1407(8) (a) as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

The Michigan's Supreme Court has further ruled in *Robinson v. Detroit*, 462 Mich 439; 613 NW2d 307 (2000) that a *proximate cause* analysis is not sufficient to define "resulting from." Instead, it requires, in the context of a police pursuit that involves a fleeing vehicle, that the government vehicle "hit the fleeing car or otherwise physically force[d] it off the road or into another vehicle or object." Under Michigan law, governmental immunity applies as long as the patrol vehicle does not push, bang, ram, PIT, or otherwise touch the fleeing vehicle, or cause any other object or vehicle to hit it.

For example, the Michigan Supreme Court has implied that the motor vehicle exception does apply if, for example, "a police vehicle rammed a car off the road and into an innocent pedestrian." This example demonstrates that a government vehicle can cause an injury by placing some object in motion that then injures the plaintiff.

Forbush cautions that the language in *Robinson* is applicable to crashes involving a police vehicle. She went on to say that, even if officers can show they were not grossly negligent in the operation of the vehicle and the court grants them immunity, their actions could still bring liability to the municipality through the negligent operation of motor vehicle exception. She went on to say that, "*negligence is measured by what an ordinary reasonable person, under similar circumstances, would do.*"

Negligence can arise through allegations that officers ignored accepted police tactics. Forbush said that *Case v. Consumers Power Co.*, 463 Mich 1, 6, 615 N.W.2d 17, 20 (2000) established elements that the plaintiff must establish in order to succeed on a negligence claim elements. In brief they are:

- (1) a duty of care owed by the defendant;
- (2) a breach of that duty;
- (3) an actual causal connection comprised of cause of fact and proximate cause; and
- (4) damages resulting from the defendant's action.

It is Forbush's opinion that the cited Michigan Motor Vehicle Code sections offer a plethora of examples creating a "*question of fact*" whether a duty was breached because an officer did not use the proper emergency equipment when they should have and/or did not operate the vehicle following the statutory expectations: "**as may be necessary for safe operation**", "**does not endanger life or property**", "**with due regard for safety**" or "**a reckless disregard of the safety of others**".

Forbush uses these examples for not meeting the "what an ordinary reasonable person, under similar circumstances, would do." Driving at excessive speed without regard to the ability to safely bring the vehicle to a stop or avoid a hazard or obstruction that may appear; ignoring traffic control devices or passing through stop intersections without slowing and checking for hazards; driving without considering the road conditions,

neighborhood, traffic volume, pedestrian traffic; not observing or ignoring obstructed view at intersections or passing vehicles when there is a limited sight ahead.

To prove negligence, in addition to the officer's actions, plaintiffs may look to the statutes or the department's policy and rules that guide officers and delineate discretion they have. They may try to prove failure to supervise the officer when the officer exercised his discretion in initiating the emergency operation, or they may evaluate the use of sirens or warning lights at or near intersections or whether the officer used due care.

## **Officers Can Go To Jail**

Even though governmental immunity protects the individual officer, unless gross negligence is proven, there is no protection in the law from civil infractions or criminal charges. Forbush cautioned that all officers should consider the full consequences of their actions when operating in emergency response. She commented that, across the country, prosecutors are evaluating officers' behaviors and the decisions they made to determine if the officers' actions support bringing a criminal charge. This is even more of a risk if a crash ends in a fatality.

## **Every Department Should Embrace "Below 100"**

Five Tenets: Wear your seatbelt! Wear your vest! Watch your speed! What's Important Now! and Remember Complacency Kills! It is a pretty simple solution to a big problem. Embracing the "*Below 100*" program helps to change the behavior of your officers to reduce the potential for injury to themselves and others and helps eliminate loss of life, loss from property damage and loss of use of equipment that is damaged. Go to [www.Below100.com](http://www.Below100.com) to find training availability.

## **A Final Thought**

Forbush points out, safe vehicle operation is not rocket science; it is a basic tenet of the law and industry standard for law enforcement. Failure to properly train and supervise employees in these situations has a highly predictable consequence of liability. Management must investigate to ensure their employees follow the law, department expectations and standard industry practices. If employees do not, no matter the level, there must be consequences.



### Are you a MML Insurance Program Member?

Go to the League's online Law Enforcement Risk Control Manual, [now compatible with any browser](#), to establish a new account using the streamlined login process. Go either to <http://www.mml-leaf.org/> or <http://www.mml.org>, under the Insurance tab/LEAF. Click the green Member Login box. At the Login screen click "Don't Have an Account". To add to the ease of use, the manual now contains a complete keyword search function.

**\*\*\*Total Policy Update in Chapter 21: Sample Policy and Procedures for Audio/Visual Recording of Custodial Interrogations.\*\*\***

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LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's, Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

*While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.*

LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Manual of Law Enforcement Risk Reduction. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the State.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

*Sponsored by the Michigan Municipal League Liability & Property Pool and Workers' Compensation Fund  
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### Operating a Vehicle in Response to an Emergency



LEAF recommends the following action points:



By policy, define when an emergency response by the department is appropriate, the action steps required to initiate an emergency response and the expectations of the officer's behavior and driving limitations that apply in exercising the discretion to respond.



Train the officers to the law as well as to management expectations and reporting requirements for engaging in an emergency response.



Require the use of seatbelts and discipline harshly if an officer does not comply.



Require officers to learn the dynamics and physical forces at play while driving the style of vehicle they are expected to operate by driving them in a controlled environment at lower speeds through rapid turns and braking maneuvers.



Train officers to focus on safe driving habits, especially while engaged in emergency driving for they cannot aid anyone if they are in a crash.



Document all training.



Use engineering controls such as in-car video automatic speed controlled recording and GPS monitoring through dispatch.



Hold officers accountable for their actions. Examples of issues that cause crashes are driving at excessive speed without regard to the ability to safely bring the vehicle to a stop or avoid a hazard or obstruction that may appear; ignoring traffic control devices or passing through stop intersections without slowing and checking for hazards; driving without considering the road conditions, neighborhood, traffic volume, pedestrian traffic; not observing or ignoring obstructed view at intersections or passing vehicles when there is a limited sight ahead.



Require supervisors and mid-level managers to monitor this activity and report violations.