

## Officers Are No Help if They Crash Going to the Emergency!

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Year after year, vehicle crashes are one of the leading causes of officer injuries and death – and one of the most common reasons for liability claims made against law enforcement agencies. We know that operating a vehicle during an emergency response is a high frequency/high severity job task for officers of the law. We know officers experience physiological and psychological changes during a pursuit which can contribute to vehicle crashes. We know this risk exposure is both significant and ever-present. Gordon Graham, risk management consultant and co-founder of Lexipol Inc., famously states, “Predictable is preventable.” Yet the crashes continue.



Clearly, we must make safer driving in emergency responses a higher priority for our organizations and officers. We must develop and implement officer training, in the classroom and on the track, that more effectively prevents vehicle crashes. When officers’ actions have a direct impact on the number of injuries and deaths, we must ensure ongoing risk reduction efforts that translate to sustained changes in officers’ everyday choices and mindsets.

These issues are as important and relevant today as they were when former Law Enforcement Action Forum Coordinator Gene King wrote the original version of this article in 2014. They are worth revisiting.

### The Cost in Lives Lost

According to statistics kept by the National Institute for Occupational Safety and Health, over the last 10 years vehicle crashes caused 25% of all deaths in the line of duty. Most years, motor vehicle-related incidents — including crashes and being struck by moving vehicles while on foot — have been the main cause of officers’ deaths, with an average of one officer per week being killed on our nation’s roads. From 2010-2019, there were:

- 393 deaths due to vehicle crashes (25% of 1,558 total line-of-duty deaths)
- 132 deaths due to being struck by a vehicle (8% of 1,558 total line-of-duty deaths)

In 2020 alone, according to data on the Officer Down Memorial Page, 20 officers died in line-of-duty automobile crashes, 4 in motorcycle crashes, and 2 as a result of pursuits. This is not an issue of the past.

### **The Financial Cost of Auto Claims**

For Michigan Municipal League members covered by MML Liability & Property Pool insurance, auto claims represented 31.24% of all claims 2017-2019, at a total cost of approximately \$6,300,000, with an average of \$6,450 per claim. It should be noted that this figure reflects only the cost of vehicle repairs and medical — it doesn't include the cost of liability claims against at-fault members via lawsuits.

### **Risky Behaviors and Choices**

Vehicle handling demands constant observation and caution in order to keep officers and citizens safe and to reduce liability – especially during emergency operations.

According to the National Institute for Occupational Safety and Health, the factors most associated with a higher risk of an officer being involved in a crash on the job are:

- Not wearing a seat belt;
- Speeding, particularly through intersections;
- Being distracted while using a mobile data terminal or other electronic device while driving;
- Experiencing tunnel vision from increased stress.

These are all factors which can be improved by training, proper oversight, and holding people accountable. Establishing a culture of safety, with a continuous focus on safe driving foremost in the minds of officers and administrators, can have a direct impact on the costs in both lives and liability.

### **The Law**

In Michigan, operation of emergency vehicles is governed by Public Act 300 of 1949, the Michigan Vehicle Code MCL 257.1 et seq. The code defines what an emergency vehicle is, the equipment required, how it may be driven, and drivers' responsibilities. If an officer is alleged to have caused a crash or injury to others while driving in an emergency, these statutes, along with other civil and criminal laws, are the basis for the analysis of and judgment upon the officer's actions.

LEAF's Legal Advisor, Audrey Forbush of Plunkett Cooney, PC, has provided key sections of the vehicle code below, with some phrases bolded for emphasis.

Forbush points out, in particular, that officers are held specifically responsible for the safety of others while driving. Further, she notes that officers *must* sound an audible signal at all times when exercising emergency driving privileges, unless the exemption in 257.603(5) can be met.

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.**
  - 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 the driver of the vehicle 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 in a 360 degree arc unless it is not advisable to equip a police vehicle with a ... light visible in a 360 degree arc. In those cases, a police vehicle shall display a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of the 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.**

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.***

### Governmental Immunity – Tort Liability

Governmental agencies exercising or discharging a governmental function have immunity from tort liability – civil lawsuits for injuries to persons or property damage (MCL 691.1407). However, there are limitations and exceptions.

One of these is the Motor Vehicle Exception (MCL 691.1405), which 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.” (emphasis added)

As a result, the pivotal issue in many lawsuits becomes determining whether there was negligence in the operation of the governmental vehicle. *Case v. Consumers Power Co.* (463 Mich 1, 6, 615 N.W.2d 17, 20; 2000) established four elements plaintiffs must show in order to succeed in a negligence claim:

- 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.

If an officer did not comply with the legal requirements for emergency vehicle operations as set forth in the vehicle codes cited above, then establishing the second element of negligence — breach of duty — can become a simple *question of fact*. Did the officer **sound an audible signal and display lights** when required? Did the officer **slow down as necessary for safe operation** and **operate with due regard for safety**? Did they **exceed posted speeds in a way that endangered life or property**, or display a **reckless disregard of the safety of others**?

Forbush adds that negligence can also be measured against *what an ordinary reasonable person would do under similar circumstances*. She offers some examples of not meeting this standard: 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.

With regard to the third element of negligence, the Michigan Supreme Court found in *Robinson v. Detroit* (462 Mich. 439; 613 NW2d 307; 2000) that, in the specific context of a police pursuit involving a fleeing vehicle, establishing *proximate cause* requires the government vehicle to have hit the fleeing car or otherwise physically force[d] it off the road or into another vehicle or object. Governmental immunity applies as long as the patrol vehicle does not push, ram, PIT, or otherwise touch the fleeing vehicle, or cause any other object or vehicle to hit it. The Michigan Supreme Court has also implied that immunity applies if a police vehicle places an object in motion that then injures a plaintiff, for example if a police vehicle rams a car off the road and into a pedestrian.

To prove negligence, plaintiffs may additionally allege that officers ignored accepted police tactics, may look to other statutes or the department's policy and rules that guide officers and delineate the discretion they have, or may try to prove failure to supervise the officer.

### **Officer Individual Immunity – Tort Liability**

Under the umbrella of governmental immunity, individual officers of the law are granted immunity from personal liability in civil lawsuits *if* their actions meet *all* of the following conditions (MCL 691.1407(2)):

- 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.

However, Forbush emphasizes that, even if a court finds an officer's conduct was not grossly negligent and grants individual immunity, the officer's actions can still bring liability to their department and municipality under the motor vehicle exception and a finding of ordinary negligence, which is a lesser standard to prove than gross negligence.

### **Officers Can Go to Jail – Criminal Liability**

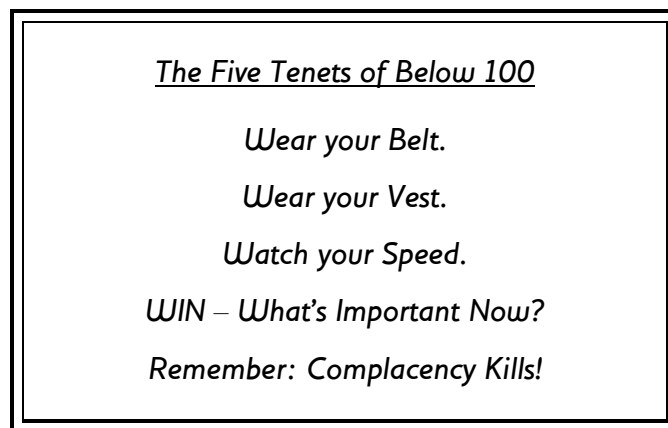
It is very important for officers to understand that, even though governmental immunity may protect them from tort liability in some cases, there is no protection in the law from criminal charges or civil

infractions. Across the country, prosecutors are evaluating officers' behaviors and decisions to determine whether to bring criminal charges against them. This is a higher possibility if a crash ends in a fatality. Forbush cautions all officers to consider the full consequences of their actions at all times when operating a vehicle in emergency response.

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

The *Below 100* program is a simple but highly effective solution to a big problem. Its vision is to eliminate preventable line-of-duty police deaths and serious injuries through compelling, common-sense training designed to focus on areas under an officer's control.

Embracing *Below 100* helps change the behavior of your officers to reduce the potential for injury to themselves and others, loss of life, property damage, and lost use of equipment due to damage.



Go to [www.Below100.com](http://www.Below100.com) to find training availability.

### **A Final Thought**

Safe vehicle operation is not rocket science; it is a basic principle of our laws and industry standard for law enforcement. Management must ensure that employees are properly trained for all driving situations, and consistently monitor and investigate to verify that employees are following the law, department expectations, and standard industry practices. If employees do not comply, no matter their level, there must be consequences — otherwise behaviors will not change.

Failure to prioritize driving safety has predictable and disastrous consequences. We must all take action now and every day to prevent crashes and save lives.



## LEAF recommends the following action points:

1. By policy, define when an emergency response by the department is appropriate, the action steps required to initiate an emergency response, the driving limitations that apply in exercising the discretion to respond, and the expectations of the officer's behavior.
2. Train the officers to the law as well as to management expectations and reporting requirements for engaging in an emergency response.
3. Require the use of seatbelts and discipline harshly if an officer does not comply.
4. Require officers to learn the dynamics and physical forces at play while driving each style of vehicle they are expected to operate by driving the vehicle(s) in a controlled environment at lower speeds through rapid turns and braking maneuvers.
5. Train officers to focus on safe driving habits, especially while engaged in emergency driving, for they cannot aid anyone if they crash on the way to the emergency.
6. Document all training.
7. Use engineering controls such as in-car video, automatic speed-controlled recording, and GPS monitoring.
8. 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.
9. Require supervisors and mid-level managers to monitor this activity and report violations.
10. Embrace the Below 100 program. Go to [www.Below100.com](http://www.Below100.com) to find training availability.

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*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.*

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 control needs and suggestions.

**Are you an MML Insurance Program Member? Are you a Law Enforcement Executive?**

If so, visit the MML's online [Law Enforcement Risk Control Manual](#) to access model policies and procedures developed by the LEAF Committee.

Go to: <http://www.mml-leaf.org/lerc.php>

Click on the green "Member Login" box in the left-hand panel.

At the Login screen, enter your username and password.

If you don't have a username and password, click "Request Access" and complete the online form.

The 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 Law Enforcement Risk Control Manual. 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.

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