

Following Best Practices for a Reserve Police Officer Program May Help Reduce Your Liability

By Matthew Heins, Law Enforcement Action Forum Coordinator

Volunteers can be a valuable asset for police departments. Their contributions can allow police officers to concentrate on core duties in their communities. Volunteer programs may be as simple as having participants handle non-emergency matters such as parking citations or found property, or they may be more complex such as having police reserve or auxiliary officers. The common approach for the latter type of program is for participants to wear a uniform and be outfitted with gear similar to licensed police officers who carry a firearm. Careful consideration should be given to your program design to meet the needs of your community while also following best practices to limit your department's risk exposure.



Currently there is no legislation or regulation that addresses the creation of a reserve police officer program. The Michigan Commission on Law Enforcement Standards (MCOLES) requires and approves the licensing of law enforcement officers in Michigan. Candidates must meet the following two requirements: (1) compliance with MCOLES minimum selection standards which includes satisfactory completion of a basic police academy or recognition of prior training and experience, and (2) employment with a law enforcement agency as a law enforcement officer. The Commission on Law Enforcement Standards Act, Act 203 of 1965 excludes "reserve officer" as part of the licensing process.

MCOLES does not license or regulate reserve police officers. This responsibility rests with the individual government entities that permit their law enforcement agency to create a reserve police officer program.

One key aspect of any reserve officer program is whether (or not) and on what grounds reserve officers are authorized to carry firearms. Decisions in this regard can have a significant effect on the agency's liability and should be evaluated thoroughly.

Reserve Officers' Authority to Carry Firearms

Because reserve police officers are not recognized as "licensed" police officers by MCOLES, they cannot obtain their authority to carry a firearm just on the basis of being called a reserve police officer. The legal foundation for allowing the arming of reserve officers is accomplished either through "open carry" or by obtaining a concealed pistol license.

Open Carry

In Michigan, a person can carry a firearm in public if it is not concealed and if it is being carried with lawful intent. This is what is commonly referred to as “open carry.” While there is no law that permits open carry, there is no law that prohibits it, so it is legal to do so.

Open Carry – Limitations

Michigan law does establish limits on *where* a person can “open carry.” The restricted locations include areas where a law enforcement officer may be commonly required to go.

The following are locations/entities where persons other than licensed officers are prohibited from entering with a firearm, per The Michigan Penal Code Act 328 of 1931, section 750.234d:

- ◆ A depository financial institution or a subsidiary or affiliate of a depository financial institution.
- ◆ A church or other house of religious worship.
- ◆ A court.
- ◆ A theatre.
- ◆ A sports arena.
- ◆ A day care center.
- ◆ A hospital.
- ◆ An establishment licensed under the Michigan liquor control act.

If a reserve police officer is carrying a firearm under the “open carry” approach to authorization, they are not allowed to enter these locations. If they do so, they may be found guilty of a misdemeanor offense.

The above restrictions do not apply to:

- ◆ A peace officer.
- ◆ A person licensed by the State of Michigan or another state to carry a concealed weapon.
- ◆ A person who possesses a firearm on the premises of an entity listed above if that possession is with the permission of the owner or an agent of the owner of that entity.

The Michigan Penal Code Act 328 of 1931 also establishes limitations on carrying firearms while inside vehicles. Sections 750.277 (2) and (3) state:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than \$2,500.00.

This means - if a reserve police officer is carrying a firearm on the legal grounds of “open carry” and gets inside a patrol vehicle, they may be found guilty of a felony offense.

Concealed Pistol Licenses

The alternative approach for authorizing the arming of reserve police officers is for the law enforcement agency to require a concealed pistol license (CPL). Possession of a CPL gives a reserve police officer the authority to legally enter the restricted locations noted above while armed. There is a minimal cost to obtain a license and the holder must be 21 years of age.

CPLs are regulated under the Firearms Act 372 of 1927. While Section 28.425(o) of this act prohibits most license holders from carrying weapons in those restricted locations, it establishes an exception for “an individual who is licensed under this act and who is an auxiliary officer or reserve officer of a police or sheriff’s department.”

The Firearms Act defines a “reserve peace officer,” “auxiliary officer,” or “reserve officer” as:

An individual authorized on a voluntary or irregular bases by a duly authorized police agency of this state or a political subdivision of this state to act as a law enforcement officer, who is responsible for the preservation of the peace, the prevention and detection of crime, and the enforcement of the general criminal laws of this state, and who is otherwise eligible to possess a firearm under this act.

A CPL also gives its holder the authority to be armed while inside vehicles, whether or not their weapon is concealed, because Section 750.277 (2) only prohibits people from carrying a pistol in a vehicle *without* being licensed to carry.

Best Practices - Training Standards

One very important aspect of any police reserve program is training. Typical tasks police reserve officers are assigned range from working special events such as festivals or parades to being assigned to a licensed police officer as a second person in the car. Police reserve officers obtain their authority when they are under the direction of a licensed police officer. They cannot work by themselves. Yet in all probability, police reserve officers will encounter situations that will require them to act with little or no input from the officer working with them. Their training will be crucial to ensure they are prepared to respond appropriately.

Consideration should be given to sending participants through some form of reserve police officer basic training program. The program should include, at a minimum, basic police procedures, arrest procedures, use of force procedures, current MCOLES standards, and a legal class.

In a court of law, even as volunteers, reserve police officers’ actions will be judged to the same standards as those of a licensed police officer. At a minimum, police reserve officer training for high liability areas, such as use of force and arrest procedures, should be the same training that licensed police officers receive. They should receive the same classroom instructions, review the same policies, be administered the same tests and practical exercises, and be expected to perform at the same level as a licensed officer.

Additional Best Practices

Further best practices prescribed by the Law Enforcement Action Forum and the Michigan Law Enforcement Accreditation Commission concern the legal foundation for a reserve police officer program, policies, job descriptions and record-keeping.

The formal authority for a program should be codified through a statute, local ordinance or regulation. This should describe the program and lay out the standards required of participants.

A policy regarding the program should be created and reviewed regularly. At a minimum, the policy should address the selection and hiring process, expectations and responsibilities, and training standards. Members of the Michigan Municipal League Workers' Compensation Fund or Liability & Property Pool have access to a sample policy through the online Law Enforcement Action Forum Risk Control Manual, *Chapter 16: Auxiliary/Reserve/Posse Officer Programs*.

A formal job description should be created describing the duties and responsibilities of the participants. It should also include physical requirements, based on job tasks, so applicants have a full understanding of the tasks they are volunteering to carry out.

Finally, a personnel record should be maintained for all participants. Reserve police officer personnel records should adhere to the same standards established for employees.

Additional Resources

For additional information please reviewing the following material:

Reserve Officer Programs – Are You Doing it Right or, at Least, Legally? Volume 13, Issue 4, December 2006:

https://www.mml.org/insurance/risk_resources/publications/leaf_newsletter/reserve_programs.pdf

Reserves: Boon or Bother? September 1996:

http://www.mml-leaf.org/leaf_lerc/chapters/16/topical_resources/ARTICLE-Reserves-Boon%20or%20Bother.pdf

Frank Kelly, Attorney General, Opinion No. 5265, February 13, 1978:

<https://www.ag.state.mi.us/opinion/datafiles/1970s/op05265.htm>

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.

*Sponsored by the Michigan Municipal League
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