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Law Enforcement Action Forum NEWSLETTER



RAPID ENTRY DURING INCIDENTS OF ACTIVE VIOLENCE

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INTRODUCTION

The Columbine High School shootings led to criticism that the first responding officers to the incident acted too slowly. As a result, the current trend in law enforcement is to instruct police officers to “rush directly toward an ongoing shooting and end it.” (*Cincinnati Enquirer*, August 29, 2000)

Understandably, law enforcement is sensitive to such charges and wants to develop a policy for rapid entry that takes effect when officers face incidents in which victims are being killed or injured. The challenge is to develop a policy based on sound management reasoning, good judgment, and an understanding of the types of incidents officers will likely face in their community. Departments must then provide officers with training in the techniques and tactics that will prepare them for the violence that they will encounter.

This newsletter focuses on the issues that law enforcement executives should explore and address when deciding whether it is appropriate for their departments to adopt a policy for rapid entry to active violence. The purpose of the discussion is to stimulate thought, discussion, research and planning. Its purpose is not to define the opinion of the Michigan Municipal League’s Liability and Property Pool or the Workers’ Compensation Fund on this issue. Each

municipality must determine its own philosophy concerning the actions of its law enforcement officers in meeting the needs of the community. The role of MML Loss Control Services is to provide information to the management and law enforcement executives of member municipalities that will help them determine what action they want to consider.

FACT OR FICTION?

Today, failing to agree that school shootings are a major risk in every community is akin to opposing baseball, hot dogs and apple pie! Images from an incident of school violence evoke strong emotions. It is unpopular to take the position that these incidents occur infrequently and, therefore, do not merit the current view that these incidents are a priority issue that requires expenditures of training dollars. In this climate, how can anyone profess that stopping the killing of children isn’t a priority? The media’s hyperbolic treatment of school violence paints a bleak picture of our society and children’s safety that national statistics do not support.

Let’s examine the situation in Michigan.

According to an article in the *Detroit Free Press* (March 17, 2001), Michigan has had two incidents that are considered school violence. The first occurred in February 1999 when some students were

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incident took place in February 2000 and involved a first grader who fired one shot into a classmate, killing her.

Despite the infrequency of such events in Michigan and elsewhere, the media continues to saturate the airwaves and news stands with stories that feed America's fear that its kids are not safe at school. According to a Justice Policy Institute and Children's Law Center report, *School House Hype: Two Years Later* (April 12, 2000), 71% of Americans believe that a shooting is likely in their school. The reality is that there is a one in two million chance of being killed in a school. Sixty-two percent of Americans believe that juvenile crime is on the increase. However, crime statistics from the FBI do not support this. In fact, juvenile crime has decreased in recent years, as have incidents of school associated violent death. Nevertheless, media hyperbole around school associated violent death incidents continues to shape public opinion on this issue.

In fact, there is a greater probability that officers will respond to an active violence incident in a workplace environment than in a school. In *Detroit Free Press* article on workplace violence in Michigan (March 17, 2001) reported that there have been twelve workplace homicides since 1989. In all, sixteen victims died and another eleven were wounded.

A National Institute of Occupational Safety and Health (NIOSH) report on *Homicide in the Workplace* (1996) concluded that homicide was the second most frequent cause of death in the workplace behind motor vehicle accidents. Excluding justice and public order establishments, the study cited the top six high-risk industries as being taxicab services, liquor stores, gas stations, protective/detective services, grocery stores, and jewelry stores. These types of establishments are prevalent throughout Michigan and are, therefore, potentially locations where rapid entry incidents may occur.

CONSIDER THE SUSPECTS

Departments must also consider the differences between school homicide and workplace homicide incidents, particularly the differences between suspects. Historically, a school shooter has been an inexperienced young combatant with a small caliber weapon. A police officer's training and skill will more than likely overwhelm the shooter. By contrast, a workplace shooter is usually an adult who probably has experience with weapons, is mission-motivated, and owns or has access to multiple high-powered weapons. The individual may be seeking "suicide by police". Officers responding to these incidents must have training that enables them to understand that their safety is at jeopardy and that exposure to violence may be imminent.

PLANNED RESPONSE

Critics of the response to the Columbine High School Shooting are using the incident to emphasize the need for a better, planned response to events of this nature. The shooting at Columbine was an overwhelming man-made disaster that no municipality could have anticipated. The tactics that the young suspects used and that others have used in other recent violent incidents underscore how much society has changed and make clear that that police, fire and EMS must modify their response appropriately.

Columbine demonstrated the emerging trend toward mass violence involving terrorist tactics. Probably one of the most important issues the incident thrust to the forefront is that municipalities must evaluate their capability to handle disasters with a planned response involving multi-governmental units. The need for intergovernmental mutual aid agreements, joint training and purchasing of equipment, and common communication capabilities is very important. Municipalities must have emergency management plans sufficiently flexible to change with the dynamics of an incident as it progresses. Everyone who responds to an incident of this nature should have training and be ready to implement the incident command system so that they are all working within the same protocol.

Municipalities should ask community and business representatives to participate in pre-planning for an incident that may occur at or near their location. They should have a general idea of what information or assistance emergency first responders may need upon their arrival. These people can be very helpful in providing resources and information to incident commanders.

Because there are so many variables in incidents of violence, even with this effort, municipalities cannot expect to be fully prepared for every violent event. The best that they can achieve is to develop response plans that, when put in place, have a reasonable expectation of managing the incident. Part of the process is to identify what risk exposures are within the area that the governmental units cover and then to plan, equip and train to respond to them.

CREATING A DUTY

Is it best to respond to active violence by making immediate entry, locating the suspect, and neutralizing him or her? That depends. Each situation is unique and requires

law enforcement to evaluate it for the risks that are present. It does no good to sacrifice the rescuers by rushing forward using poor judgment or bad tactics. Contrary to public opinion, the police cannot always save everyone. Police departments cannot make claims that they will always respond in a way that will stop the violence and save lives. Municipalities must audit their policy language, rhetoric and public statements to ensure that they do not create a duty to protect individuals who find themselves victims of active violence. Making these claims and advertising how the department will save the children is great public relations and super press for the newspapers and television. It can also jeopardize officer safety by diminishing the element of surprise.

Mr. James DeGrazia, Legal Advisor to LEAF, cites several critical issues surrounding the "creation of a duty" to protect. It is most important that officers understand the Public Duty Doctrine. This doctrine holds that a municipality will not be held liable for failure to protect its citizens from private acts of violence, unless the municipality was in a "special relationship" with the aggrieved party. In the federal context, DeGrazia points to the US Supreme Court decision in *DeShaney v Winnebago Cty. Dept. of Social Services*, 109 SCt 998 (1989). The Court ruled that the Due Process Clause of the Fourteenth Amendment to the United States Constitution does not impose an affirmative obligation on a State to ensure that individuals have certain minimal levels of safety and security. States are responsible when they develop a "special relationship" by imposing a limitation on a person's freedom to act on his own behalf by restraint of his personal liberty. This deprivation of liberty triggers the protections of the Fourteenth Amendment, Due Process Clause.

DeGrazia also cites *White v Beasley*, 433 Mich 358 (1996), a Michigan Supreme Court case that establishes an exception to the Public Duty Doctrine when the creation of a "special relationship" exists. The creation of a "special relationship" creates a duty to protect and the failure to protect creates liability. Citing a New York State decision, *Cuffy v City of New York*, 69 NY2nd 260, (1987), the Court applied the "Cuffy" test to determine when a "special relationship" exists. The elements of the "Cuffy" test are:

1. An assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured;
2. Knowledge on the part of the municipality's agent that inaction could lead to harm;
3. Some form of direct contact between the municipality's agent and the injured party, and

4. That party's justifiable reliance on the municipality's affirmative undertaking....

To illustrate, the following are quotes from articles and policy documents that address the issues surrounding active violence. Each may be construed as acknowledging a duty to protect.

"... shall accomplish this goal by immediately using all legal means at their disposal to confront and stop an Active Shooter";

"... officer's first duty is to first protect all innocent life by stopping the actions of the Active Shooter";

"... to maintain the high quality of life and the safety of the citizens;

"... officers are sworn to take action and intervene when violence is being perpetrated";

"Police adopt terminator approach to school shootings"; Chief says his department will hunt down the shooter and stop the violence to protect the safety of the children who attend the City's schools".

WHAT'S NEXT?

The first step that a department must take is to decide whether a risk exposure exists that requires a program specifically for training officers to respond to incidents involving active violence. The department should determine if its firearms, use of force, building search and suspect apprehension training already meet the need of the risk exposure it identified in the community. If not, implementing a policy and program for rapid entry may be necessary.

TRAINING

If the department decides to implement a new policy for rapid entry in active violence situations, it must understand the legal implications on training under the current state of the law.

According to DeGrazia, training to handle these type of incidents and take appropriate action is at the heart of the U.S. Supreme Court decision in the *City of Canton v Harris*, 109 SCt 1197, 1204 (1989). At issue in *Canton* was whether, under Section 1983, a municipality could be held liable for its failure to adequately train employees. In this case, the Canton Police took the plaintiff into custody. During her incarceration, she

exhibited abnormal behavior, but the Canton officers did not provide medical attention. The Court ruled that inadequate police training may serve as a basis for Section 1983 liability where the failure to train amounts to a deliberate indifference to the constitutional rights of a person with whom the police have contact.

In order to impose liability under the standard of deliberate indifference, the plaintiff must show that two essential elements exist. First, the plaintiff must show that a particular training program inadequately prepared the officer for the task he or she had to perform. Second, to impose the deliberate indifference standard, the plaintiff must prove that the deficiency in training was the actual cause of the plaintiff's injury.

Training Considerations

When committing to a policy of rapid entry, officers must have training in incident recognition, specialized entry techniques, tactical movement and cover techniques, and use of force options. Officers responding to the initial call will most likely be patrol officers. They must know how to determine when they are facing an incident that makes rapid entry reasonable and necessary.

For the past twenty years officers have learned that when they face a violent incident they should isolate and contain the incident, then set up a perimeter and wait for specialists to arrive. The rapid entry concept is, therefore, a significant shift in paradigm. Since the frequency of these types of incidents is low, the department must also commit to providing all officers whom it expects to perform rapid entry with training at regular intervals to help them maintain their knowledge and skills. The training that the department provides must undergo scrutiny to ensure that it is consistent with departmental policy and the law. Officers should also learn the risk factors in undertaking this activity. They must understand that the goal is to stop the violence using the level of force necessary to overcome the resistance of the suspect. Officers have to recognize that these incidents are fluid, and they must have training in recognizing when the mission goals change as the resistance that the suspect offers changes.

The department should evaluate the types of businesses and services within the municipality. This will help to determine the kind of building designs a rapid entry team has a higher probability of encountering. Although there are some similarities in office interior design, public, retail, medical, and manufacturing buildings are different by function and can provide significant tactical challenges to a rapid entry team. This makes it important to include

training scenarios from both common and industry specific interior designs found in the municipality.

CONSIDERATIONS FOR FIRST RESPONDERS

Active violence incidents generally last less than fifteen minutes. Departments should determine the likelihood that patrol officers can arrive at an incident of active violence with sufficient numbers to meet deployment requirements. The probability of response strength directly relates to the type of rapid entry tactics that the department can teach. Departments must find training that fits their ability to respond.

Most of these incidents occur during daytime hours. First responders could very likely be plainclothes officers and administrative personnel. Departments must consistently require officers to have the appropriate weapon and body armor always with them so they can become a member of an entry team. Departments must require all regular patrol officers who might be first responders to arrive at an incident with the equipment necessary to become a rapid entry team member. Departments should review their standard equipment and weapons policies to ensure that they clearly state what the department requires officers to carry and use.

ONE COUNTY'S EFFORT

The Eaton County Chief's Association has spent a significant amount of time dealing with the development of an Armed Critical Incident Response Policy and a related training program. Eaton County Police Departments sent a contingent to the program taught by an Ohio based training company. Upon their return, Chief Martin Underhill of the Grand Ledge Police Department was given the task of bringing together a team of subject matter experts to develop a curriculum that would best reflect the needs of the municipalities in Eaton County when implementing this program. They worked hard on the training program and its validation. The LEAF Committee has been helping to develop the policy that implements the training. The policy and the related training are good examples of the issues that departments should address when adopting a policy and related training program. All the officers in the County have received the first level of training. The second level of training will begin soon. The Eaton County Chief's of Police are willing to make their work available to interested departments as an example of what they did to meet what they determined was the need of their communities. To obtain more information contact one of

the Police Departments in Eaton County

CONCLUSION

This article has discussed various issues surrounding response to an incident of active violence. The most important is that the decision to adopt rapid entry policy requires an ongoing commitment to pre-incident planning and the development of a policy and training program that reflects and incorporates the specific characteristics and needs of the community where it is going to be implemented. Developing such a policy and program might involve an individual municipality or a group of municipalities. The techniques that the department adopts and the training that it provides should include familiarization with the types of structures that officers have the most probability of entering. Although techniques of entry and tactics are transportable, the environment of a school in comparison to a business or manufacturing setting can be very different.

Even if departments decide not to adopt a rapid entry policy, municipalities should plan for the possibility of a natural or man-made disaster. They should consider regional planning to provide for a coordinated equipment purchasing process. This would ensure that participating Police, Fire, EMS, and Dispatch have consistent equipment. It also allows for employee familiarization and cross training on equipment. In a disaster, employees for any municipality can work together with the common knowledge to operate needed equipment. Municipalities should ask business and community leaders to participate in planning and to prepare their operations to assist in the response to an incident.

The difficult issue of whether to adopt a policy for responding to active violence has been thrust upon the Law Enforcement community. School violence is an emotional issue. The media has fueled the public's perception that their schools are unsafe. Police Departments must remember that they serve a variety of customers. When looking at the adoption of a tactical policy such as rapid entry in active violence incidents departments need to evaluate the entire population venues that they serve.

The LEAF Committee of the Michigan Municipal Liability and Property Pool and Worker's Compensation Fund has distributed the Manual of Law Enforcement Risk Reduction on CD-ROM. Several chapters in the Manual are components of a Response to Armed Critical Incidents

policy. 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 Risk Management Services at 734-669-6344 or Loss Control Services at 800-482-0626, for assistance with your risk reduction efforts.

While compliance with the loss prevention techniques suggested herein might 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.

POLICY DEVELOPMENT CHECKLIST

When a department decides there is a need to establish a rapid entry policy, they should:

- ✓ Identify the areas of the community that have the greatest risk exposure.
- ✓ Determine the type of training that is necessary to perform a rapid entry in the high-risk buildings.
- ✓ Develop a policy containing:
 - Definition of Armed Violence and Active Violence
 - Use of Force Options
 - First Responder Duties
 - Rapid Entry Team Duties
 - Command Duties
 - Dispatch Duties
 - Process for Incident Review and Investigation

The department should provide training in the following areas to all officers it selects to participate in this activity:

- ✓ Equipment necessary when acting as a member of an entry team.
- ✓ Use of safe entry techniques,
- ✓ Tactical movement in a hostile environment,
- ✓ Focused mission goals,
- ✓ The law and use of force options
- ✓ Command responsibilities

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