



Law Enforcement Action Forum Newsletter



Risk Reduction Strategies and Best Practices

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PERSPECTIVES ON LEADERSHIP

Are Your Policies Sound and Up-to-Date?

As the leader of your organization, you bear ultimate responsibility for the actions of your personnel. You set the strategic goals and steer the ship in the right direction to provide the best service possible to the citizens of your community, in the most efficient manner possible. In fulfilling this role, you are also a risk manager.

Every decision you make has consequences and therefore risk, whether the stakes seem low or high. Making good decisions helps reduce liability exposures for your municipality, which can mean fewer employee injuries and improved cost-effectiveness.

As a leader, one of the most important decisions you can make is to prioritize the implementation of sound, up-to-date policies that reflect current best practices within law enforcement. Developing new policies or revising old ones can be time-consuming and rigorous, but is well worth the investment and absolutely necessary to the proper and safe operation of a modern police department.

A common error when working on policies is not allowing line-level staff to provide input or review the policy before it is finalized. This can result in a well-intentioned policy that is impractical to implement, leading to frustration and poor compliance. What seems logical in theory may not work well in reality. Bringing all levels of staff into the process will improve the end product and increase employee buy-in.

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When complete, a policy should be easy to read and understand. It should establish clear directives while allowing appropriate leeway for officer discretion. Policies should be considered living documents and not set on a shelf to collect dust. They should be reviewed on a regular schedule for updates.

Regular training on your policies (and documentation of the trainings) is essential as well. We strongly recommend holding annual staff trainings on policies that address high-liability topics such as the use of force, vehicle pursuits, and arrest procedures. Officers need to be very familiar with the intricacies of these types of policies. This will help them instinctively react correctly when they find themselves in a stressful situation requiring quick decisions and speedy responses.

The Law Enforcement Action Forum prepares model policies that address high-liability activities commonly seen in lawsuits and officer injuries. These policies, along with sample forms and reference information, make up the *MML Law Enforcement Risk Reduction Manual*, which is available, free of charge, to law enforcement executives of MML Liability & Property Pool and Workers' Compensation Fund member communities.

LESSONS LEARNED: Tragedy in Uvalde, Texas

Tragic events often reveal lessons to be learned – both by those directly involved and by others who may find themselves facing similar situations. While investigations into complicated incidents can take some time to reach their conclusions, there are immediate lessons we can glean from the Uvalde, Texas school shooting and actions steps you can take right now to prepare for active violence situations.

Training: Response to active violence training should be undertaken annually. These high-risk, confusing and stressful situations do not happen regularly in any given community, so the only way to ensure a well-coordinated response is through training. Train with the people who will respond to assist you, whether from your agency or from neighboring jurisdictions.

Leadership: Develop leaders in your department and leadership skills in every officer. There is no predicting when any member of your force may need to step in and step up, so make sure every officer is prepared take over and lead at a moment's notice.

MOUs: Make sure you have memorandums of understanding in place with coordinating agencies before you need them. Review your MOUs frequently and speak regularly with those involved.

Encourage a learning mindset: While extreme examples catch our attention, there are lessons to be learned from everyday police responses in your jurisdiction. With the advent of body cameras, you now have a plethora of training material. As a matter of routine, review a video a week or a month with officers and discuss how the situation was handled and how it could have been done better – or how it demonstrates a successful response. Be sure to present these reviews as opportunities for everyone to learn and to improve the department as a whole, not to blame or shame particular individuals.

RECENT COURT DECISIONS

***United States v. McCallister* US Court of Appeals for the Sixth Circuit**

Police in Akron, Ohio received an anonymous call that men were smoking marijuana in Whitney Park, a “high-crime area.” Detective Elam and several other officers went to investigate. They arrived at the park in the early evening and saw 10-15 men gathered in close proximity. As officers approached the group, they detected the odor of marijuana and began stopping members of the group. Four men, including McCallister, tried to walk away. An officer instructed them to stop moving and place their hands on their heads. The men complied and stood huddled together. As McCallister raised his hands, his shirt lifted and Elam saw a firearm magazine tucked into McCallister’s waistband. Elam also saw a “little bump out” from McCallister’s shirt, which the detective concluded was a gun, and saw McCallister turn his body away from the officers and “in towards the huddle so no one would see what’s in front of him or see anything on the sides of him.” Elam asked McCallister if he was carrying any weapons; McCallister did not respond. Elam then frisked McCallister and retrieved a pistol with an installed conversion device.

McCallister was indicted for possessing an unregistered firearm and illegal possession of a machinegun. He then filed a motion to suppress the weapon, claiming it was a result of an unreasonable search and seizure. District Court denied the motion and the Sixth Circuit Court of Appeals has now affirmed the denial, finding that the officers did have reasonable suspicion that the men in the group, including McCallister, had smoked marijuana, justifying the initial stop, and that Elam had reasonable suspicion that McCallister was armed and dangerous, justifying the frisk.

***Rouch World LLC v. Department of Civil Rights* Michigan Supreme Court**

The owners of Rouch World, LLC denied a request to host the same-sex wedding of Natalie Johnson and Megan Oswald at their facility, claiming that doing so would violate their religious beliefs. The owner of Uprooted Electrolysis, LLC denied hair-removal services to Marissa Wolfe, a transgender woman, on the same basis. Johnson/Oswald and Wolfe filed complaints with the Michigan Department of Civil Rights (MDCR), which opened investigations into their complaints. The investigations were put on hold when Rouch World and Uprooted Electrolysis brought an action against the MDCR before the Michigan Court of Claims, seeking a declaratory judgment that gender identity and sexual orientation are not included in Elliott-Larsen Civil Rights Act (ELCRA) protections against discrimination based on sex.

Relying on a previous decision in *Barbour v. Department of Social Services*, 198 Mich. App. 183 (1993), the Court of Claims held that ELCRA protections include gender identity but do not include sexual orientation. The MDCR appealed the decision regarding sexual orientation to the Michigan Supreme Court, which has now ruled that ELCRA also prohibits discrimination on the basis of sexual orientation. With this finding, the Supreme Court also overruled the Court of Appeals’ previous decision in *Barbour*.

LEGAL INSIGHTS

Quick Reference for Use of Force Review

When reviewing use of force reports, what should a supervisor look for? A good approach is to rely upon the same criteria the United States Supreme Court uses when analyzing use of force.

- 1) What is the severity of the crime at issue?
(Why are we here? Armed robbery, domestic violence, mentally ill family member, a minor traffic violation like a suspended license, etc.) and
- 2) Is the suspect an immediate threat to the police officer and/or the public? and
- 3) Is the suspect actively resisting or attempting to evade arrest by flight?

An officer must be able to articulate the facts and circumstances which justify the level of force. Answering these questions will help in assessing whether the use of force was objectively reasonable based on the totality of the circumstances.

By Audrey Forbush

Plunkett Cooney



MIOSHA MOMENT

Safety & Health Standard Part 11: Recording and Reporting of Occupational Injuries and Illnesses

Reporting fatalities, hospitalizations, amputations, and losses of an eye as result of work-related incidents to MIOSHA.

Fatalities: Within 8 hours after the death of any employee from a work-related incident, you must report the fatality by telephone to the **MIOSHA toll-free central telephone number: 1-800-858-0397**.

Hospitalizations, amputations, and losses of an eye: Within 24 hours after the inpatient hospitalization of 1 or more employees, or an employee's amputation, or an employee's loss of an eye as a result of a work-related incident, you must report the inpatient hospitalization, amputation, or loss of an eye to MIOSHA.

MIOSHA Consultation, Education & Training Division

The Consultation Education and Training (CET) Division offers free, statewide safety and health assistance to employers and employees. Call: 517-284-7720

Do you have questions about
any material in this newsletter?

Do you have a suggestion for topics
to be covered in future editions?

Call or email Matt Heins at
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LEAF MEMBER SPOTLIGHT

Elmer Hitt
Director of Police & Fire Services
City of Jackson



THE LAW ENFORCEMENT ACTION FORUM (LEAF)

LEAF includes police chiefs, sheriffs, and public safety directors from law enforcement agencies of all sizes and all over Michigan.

LEAF members meet regularly to discuss relevant public policy matters and assist in developing model policies for the MML *Law Enforcement Risk Control Manual*.

The *Manual* is available free of charge to law enforcement executives of MML Liability & Property Pool and Workers' Compensation Fund member communities.

For access to the manual of model policies,
complete the request form at:
<http://www.mml-leaf.org/request-access.php>

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