



Law Enforcement Action Forum Newsletter



Risk Reduction Strategies and Best Practices

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PERSPECTIVES ON LEADERSHIP

Training is Essential

Employee training aims to enhance knowledge, skills, and competencies to improve their performance, productivity, and effectiveness. Training is designed to bridge skill gaps, upgrade existing skills, and develop new skills. The benefits are many: improved employee engagement and satisfaction, adaptation to change, talent development and retention, and enhanced customer relations.

Employee training is also crucial to successful risk management. In the *City of Canton v. Harris* (1989), the U.S. Supreme court established that municipalities can be held liable if deliberate indifference to the need for training and failure to train its officers results in civil rights violations under 42 U.S.C. §1983.

To successfully defend against claims of this type, you must be able to supply documentation that officers received adequate and appropriate training in all areas or activities that are expected, obviously, or routinely associated with their specific job assignments or responsibilities.

The excuse that you do not have enough money, staff, or time to train will not hold up in court. Consider training an essential requirement for all employees throughout their careers.

One common question is, "What should we focus on?" The entire list can be extensive. Focus training priorities on job functions that are regularly performed before those performed less frequently. Start with high-risk categories and build out from there. Develop a three-year training plan. This will keep you on track. Use the following list as a starting point.

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- Assisting the Mentally Ill and Substance Abusers (Yearly)
- Managing Persons In-Custody (Yearly)
- Firearms Training (Minimum of Twice a Year, more is Preferred)
- Vehicle Operations (Yearly, and Physical Driving Every 3 Years)
- Use of Force (Yearly)
- Defensive Tactics/Weapons (Yearly)
- Hazardous Materials (Every Two Years)
- Bloodborne Pathogens (Yearly)
- First Aid/CPR (As Required by Certifying Body/Manufacturer)
- Fire Extinguisher Use (As Needed)
- Michigan Right to Know (Required Once. Posting of Information also Required)
- Sexual Harassment – Hostile Work Environment – Discrimination (Yearly)
- Legal Update (Yearly)

Remember that training can occur in various formats, not just a classroom. It can be web-based program, a podcast, an article from a professional journal, or a supervisor speaking in detail with officers. The key is to recognize when training occurs and to document it properly in the employees' training files.

Training is vital to employee development; maintains professionalism within an organization, and can also serve as a defense in potential lawsuits. Make it a priority, fund it accordingly, plan for it, and document it!

LESSONS LEARNED: Executing Search Warrants for Drugs

The execution of drug search warrants is a high-risk, low-frequency event, and fraught with danger. So much so, that the first question that should be asked is, "Do we need to conduct a raid, or is there a better way to accomplish our goals?" If the need is confirmed, the next question should be, "Have we planned the raid down to the most minute detail?"

Search warrant activities must be well planned, conducted by officers trained in dynamic entries, and thoroughly documented. Here are a few basics to consider before initiating a search warrant.

1. Is there a better alternative to obtain your objective?
2. Do you have the probable cause for a warrant?
3. Did you obtain a search warrant?
4. Do you have access to a full-time tactical team, such as the Michigan State Police? If your department has a tactical team, is it trained and equipped to best practices and capable of handling the raid?
5. Do you have a raid plan that provides information on the location, the suspects involved, the routines of the people at the site, assignments for each team member, surrounding buildings of concern such as a hospital or school, and emergency plans if a suspect or officer is hurt? Has the best time and day of the week been selected?
6. Is an after-action briefing completed to learn what went well and what could have been done better?
7. Is the raid plan and after-action report documented and maintained for future reference?
8. Do you have a Memorandum of Understanding with all participating agencies? Is it reviewed regularly?

Ensure that you have an existing policy that addresses the execution of search warrants. The best approach is to utilize a full-time tactical unit. If this is not feasible, ensure that the team you use is well-trained in the execution of search warrants and does everything within reason to minimize the danger.

RECENT COURT DECISIONS

United States v. Williams

U.S. Court of Appeals for the Sixth Circuit 2023

Michigan State Police Officer Lay, stationed 35 miles from the Indiana state line, noticed a northbound vehicle following closely behind another car. Lay began following the vehicle and ran its plate through a database, which noted the car had been in Texas one day before. Lay pulled the vehicle over and approached. Unprompted, the passenger handed over his driver's license without making eye contact. The driver produced his driver's license and a car rental agreement. Returning to her cruiser, Lay ran the information through databases and radioed for assistance. The driver's name came up clean; the passenger was on probation for a prior crime. About seven minutes into the stop, Lay exited her cruiser to speak with the passenger about his probation status; he was less than forthcoming. Lay asked consent to search the car, which the driver denied. A K-9 sniffed the vehicle's exterior and alerted to the presence of drugs, prompting the officers to search the car. They found two gym bags in the back seat containing cocaine and methamphetamine.

The Sixth Circuit affirmed the denial of the defendant's motions to suppress, rejecting arguments that the traffic stop was unconstitutionally overlong, and that the driver's arrest was unsupported by probable cause.

A lawful traffic stop must be limited in scope and duration. If officers exceed the scope or duration of the traffic stop, they must have "reasonable suspicion" to continue the stop on unrelated grounds.

United States v. Mason

U.S. Court of Appeals for the Sixth Circuit 2023

On January 29, 2020, the Willoughby Hills Police Department in Ohio received a call at 2:40 p.m., reporting that two unresponsive people were slumped over in a parked vehicle. The vehicle was not running, and the caller believed its occupants had been there for thirty to forty-five minutes.

Officers attempted to wake the occupants by knocking on the vehicle windows and yelling. The fogged windows made it hard to see and lead officers to believe the people had been there for a while. The officers thought they needed to render aid and planned to break a window. The driver woke in a daze and, after multiple attempts, unlocked the doors. Both people were non-responsive, so officers removed them from the vehicle to render aid. The interior smelled of alcohol; an open bottle of gin was in the center console, and ammunition was visible on the floor. As the passenger, Mason, was removed, a handgun fell from his pants.

Both occupants were transported to the hospital and an inventory search of the vehicle revealed a loaded magazine and an ammunition box with additional ammunition. Mason was charged with federal weapons offenses. He filed a motion to suppress, stating the officers violated his Fourth Amendment rights when the passenger side door was opened without probable cause. His motion was denied, and he appealed.

The Sixth Circuit Court of Appeals noted, "We have found sufficient evidence to justify a caretaking search in cases where the police have been called to the scene of some sort of disturbance or have witnessed persons putting themselves or others in danger." Courts have held that, to qualify as "caretaking," an officer's actions must be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Time must also be of the essence. If the delay is not "reasonably likely to result in injury or ongoing harm to the community at large," the police must get a warrant.

The appeals court affirmed that the officers acted as community caretakers when they opened Mason's door.

LEGAL INSIGHTS

Failure to Intervene

It has long been established that a police officer can be subjected to liability for failing to intervene to prevent a constitutional violation such as the use of excessive force.

An officer who stands by and does nothing is just as responsible as those who are utilizing the excessive force where:

- 1) the officer observed or had reason to know that excessive force would be or was being used, and
- 2) the officer had both the opportunity and the means to prevent the harm from occurring.”

Floyd v. City of Detroit, 518 F.3d 398, 406 (6th Cir. 2008)
(quoting *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997))

By Audrey Forbush

Plunkett Cooney



MIOSHA MOMENT

Part 451: Respiratory Protection

Five Important Safety Rules

- 1) An employer shall develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use.
- 2) Employees who are either required to wear respirators or choose to wear an Air Purifying Respirator voluntarily must pass a medical exam before being permitted to wear a respirator.
- 3) Fit testing is required for employees who are required to wear any tight-fitting respirator and shall be conducted:
 - Before the employee is allowed to use that type of respirator.
 - Annually.
 - When there are changes in the employee’s physical condition that could affect respiratory fit (i.e. noticeable change in body weight, facial scarring, etc.).
- 4) Employees will be fit tested with the make, model, and size of the respirator that they will wear.
- 5) Put Employees are not permitted to wear tight-fitting respirators if they have any condition, such as facial scars, facial hair, or any condition that prevents them from achieving a good seal.

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?

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LEAF MEMBER SPOTLIGHT

Ryan Grim
Chief of Police
City of Marquette



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>
(Note: If you move to a different law enforcement agency, you must reapply.)

A service of the Michigan Municipal League
Liability & Property Pool and Workers' Compensation Fund
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