

law enforcement action forum

Newsletter

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By Matt Heins, Law Enforcement Action Forum Coordinator

Risk Reduction Strategies and Best Practices

PERSPECTIVES ON: LEADERSHIP

It is okay to say, “I need some help.”

The negative attitudes and barriers to employee mental health are finally beginning to shift. In generations past, the typical attitude in the public safety arena was “suck it up.” You were expected to witness and calmly manage horrific, traumatic incidents and then return to work unaffected. You tried not to show anything that could be perceived as weakness, fearing your job would be in jeopardy or your co-workers would ostracize you.

Today, discussions about mental health are becoming more common in daily discourse. Stigmas and stereotypes are gradually giving way to the understanding that anyone can struggle—that it shouldn’t be considered shameful to admit you need help.

For law enforcement and other first responders, traumatic stressors can include vehicle crashes, assaults, child abuse, sexual assaults, overdoses, or self-inflicted injuries. Unfortunately, situations like these and others can take a real toll on the mental health of any employees involved. A single incident can set in motion a downward spiral; so can an accumulation of events over many years.

Officers and other staff develop various mechanisms to cope—some effective and some not, some healthy and some not. Even if an

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individual in law enforcement never experiences a severe mental health crisis, they will not be the same person at retirement as they were when they started in the field.

Your employees are your agency's most important asset. You commit significant time and money to their hiring and training, hoping for long-term, productive employees. Addressing mental well-being is a vital aspect of keeping employees both healthy and productive. Do not assume you understand how an event is affecting a person or presume to judge whether it "should" affect them. Someone may struggle with their first tough incident or be fine for twenty years and then "suddenly" devastated by a seemingly innocuous incident.

Make it a priority to check with your employees to see how they are doing. Monitor incidents for situations of particular concern. Consider how all staff, including civilian employees or dispatchers, may be impacted by an event. Offer an Employee Assistance Program so people can seek help anonymously. Provide regular "check-ins" with mental health professionals. Ensure that literature with information on resources (and how to access them) is readily available to all employees.

As the leader of an organization, your words and actions set the tone. Talk openly and often about mental health and the importance reaching out when struggling. Let employees know they will be supported and their jobs will not be jeopardized. Express sincere empathy and concern for employees' mental well-being. Work with senior staff to establish and maintain a culture of respect and compassion that lets employees know it is safe to step forward. Most of all, let people know it is not a sign of weakness to say, "I need some help."

LESSONS LEARNED: The Need for Emergency Response Plans

Recent severe weather events in Michigan should prompt municipalities to revisit their emergency response plans. A well-thought-out Emergency Response Plan is applicable to a wide variety of possible situations. Active violence, mass casualties, or severe weather events may appear different, but the response protocol is similar. A yearly review and active participation in emergency response plans are vital for a well-coordinated response.

Steps you should take before a need arises:

- Create a written emergency response plan. Work collaboratively with government agencies and the private sector, considering who will be involved in catastrophic events and what role they will fulfill.
- Review the plan regularly with all parties to ensure it is current and all individuals and resources are correctly identified.
- Tabletop exercises are essential to determine how the plan will function, what individual responsibilities are, and who has the authority to make decisions.
- Interoperability of communications is vital. Test frequently and ensure all organizations have the appropriate communication equipment.
- Memorandums of Understanding should be created, approved, and updated regularly.
- Record-keeping during an event is essential to document both activities and expenditures. Recouping costs may be necessary after the event is over.
- Educate the public on the plan, emphasizing that resources may be limited during an event and they, too, should make an emergency plan and prepare for the possibility being on their own for the first three days.

An incident that initially appears small can grow in complexity and quickly overwhelm a municipality. The public expects their elected officials and government representatives to be prepared. Don't wait until the event you dread occurs—think things through *now*. Plan *now* so your community is ready.

RECENT COURT DECISIONS

Jorden Brown v Samuel Giles

US Court of Appeals for the Sixth Circuit, 2024

Police were called on Jorden Brown. Officer Samuel Giles responded. Brown had a warrant for his arrest. Brown provided a fake name and denied he had warrants for his arrest. Brown ran from Officer Giles. Officer Giles pursued and, mid-stride, fired his taser. One probe hit Brown's head, and the other hit his back. Brown fell and hit his head on the ground and suffered injuries from the fall. Brown sued, claiming excessive force and the department policies or customs enabled the violation.

The district court determined that Brown failed to allege a violation of clearly established law. Brown appealed. The courts have held that it's reasonable for officers to tase fleeing suspects. The fact that Officer Giles tased him isn't enough to establish excessive force.

Brown attempted to say the use of the Taser was dangerous because a probe struck him in the head. The court said they "doubt that this difference matters in the context of a mid-chase decision to tase a fleeing suspect. It's difficult to imagine how a sprinting officer could aim his taser precisely enough to (1) hit a suspect with both taser probes while (2) ensuring that neither probe hits the suspect's head. It's even harder to imagine that the Fourth Amendment requires such a feat. That's precisely why we defer to officers' "split second" decisions in fast-paced, complex situations." The court said Officer Giles was entitled to qualified immunity. The claims against the police chief and municipality failed because the underlying constitutional claim did not survive.

Lindke v Freed

Supreme Court of the United States, 2024

City Manager James Freed of Port Huron, Michigan maintained a Facebook page with a public page, meaning that anyone could see and comment on his posts. He operated his Facebook page by himself and primarily posted about his personal life. Freed also posted information related to his job, such as highlighting communications from other city officials and soliciting feedback from the public on issues of concern. Some posts were personal, and some contained information related to his job.

Kevin Lindke commented on some of Freed's posts, expressing his displeasure with the city's approach to the pandemic. Freed eventually blocked Lindke from his page. Lindke sued Freed, alleging that Freed had violated his First Amendment rights.

The District Court determined that Lindke's claim failed because Freed managed his Facebook page privately, and only state action can give rise to liability under §1983. The Sixth Circuit affirmed.

The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their constitutional rights—including the First Amendment right to speak about their jobs and exercise editorial control over speech and speakers on their personal platforms.

A public official's social media activity constitutes state action under §1983 only if the official (1) possessed the authority to speak on the State's behalf and (2) purported to exercise that authority when he spoke on social media. Unless Freed was "possessed of state authority" to post city updates and register citizen concerns, his conduct is not attributable to the State. Importantly, Lindke must show more than that Freed had some authority to communicate with residents on behalf of Port Huron. The threshold inquiry to establish state action is not whether making official announcements could fit within a job description but whether making such announcements is part of the job the State entrusted the official to do.

LEGAL INSIGHTS

Compliance with the *Law Enforcement Officer Separation of Service Record Act* is not optional, not discretionary, but **mandatory**.

The *Law Enforcement Officer Separation of Service Record Act* (LEOSSRA), Public Act 128 of 2017, found at MCL 28.562, requires law enforcement agencies to not only maintain a record regarding the reason for, and circumstances surrounding, separation of service for each officer who separates from the agency, but it requires the agency to disclose the reason for separation to MCOLES and to any agency seeking to hire that officer.

The MCOLES *Separation Affidavit* must be signed by the Agency Head under penalty of perjury, recognizing that “any misrepresentation” constitutes “fraud and is punishable as a felony.” Recent events have highlighted the ramifications of “fudging” or being less than candid about reasons for separation. If an officer retires/resigns in lieu of termination or while under investigation, it can no longer be swept under the rug—disclosure is mandated by law.

The prospective employing agency shall not hire that officer until they receive that record, and they **MUST** complete a thorough background investigation before hiring. MCOLES can mandate the production of that investigation/record to determine compliance with licensing standards.

**By Audrey Forbush
Plunkett Cooney**



MIOSHA MOMENT

Part 33: Personal Protective Equipment (PPE)

This standard requires an employer to assess the workplace to determine if hazards that necessitate PPE are present or are likely to be present. If the hazards are present or are likely to be present, then the employer shall:

- 1) Select and have affected employees use PPE that will protect the employee from the hazards identified in the hazard assessment.
- 2) Communicate selection decisions to each affected employee.
- 3) Select the PPE that properly fits each affected employee.
- 4) Select PPE designed and constructed to be safe for the work.

An employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated, the person certifying the evaluation has been performed, the date or dates of the personal protective hazard assessment, and the document is a certification of hazard assessment.

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.

LEAF MEMBER SPOTLIGHT

Joe Scheid

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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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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.

To 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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