

law enforcement action forum

Newsletter

Fall 2024 - Volume 31, Issue 4

By Matt Heins, Law Enforcement Action Forum Coordinator

Risk Reduction Strategies and Best Practices

PERSPECTIVES ON: LEADERSHIP

Finish What You Started

Internal investigations are often complicated, time-consuming, and unpopular with employees. This can lead to an attitude of, “Let’s just get this done and closed.” So when the person who is the primary focus resigns before an investigation is complete, agency leaders face temptation and the question: now what? Take the easy way out and close the investigation, or do the right thing and finish what you started?

It is crucial to understand that there are numerous and important reasons to complete investigations once they are begun. The gravity of the original situation remains and demands your total commitment.

The purpose of an investigation is to uncover facts, determine whether any misconduct or violations occurred, identify all employees involved, and evaluate factors that may have contributed to the circumstances at hand. Investigations often begin with minimal confirmed information and it can take time for the whole picture to become clear.

When the primary focus of an investigation resigns, you may not yet know whether additional employees were involved, how egregious their actions may have been, if criminal charges could arise, or what operational or other problems may surface. A thorough investigation is necessary to uncover this information.

Without a full investigation, root causes may remain unknown and unresolved, allowing problems to persist and worsen. An incomplete investigation may also lead to unfair or incorrect conclusions that could harm innocent employees or allow wrongdoers to escape accountability.

INSIDE THIS ISSUE

Perspectives on: Leadership Finish What You Started	1
Lessons Learned School Resource Officers	2
Recent Court Decisions <i>Slaybaugh v. Rutherford County, TN</i> <i>People v. Prude</i>	3
Legal Insights Municipal Liability— Internal Investigations Can Save You	4
MIOSHA Moment Hey Chief, MIOSHA’s at the Door	4
LEAF Member Spotlight Donald Mawer, Chief of Police Frankenmuth Police Department	5

(Continued on page 2)

(Continued from page 1)

Additionally, an incomplete investigation leads to missed opportunities for organizational learning and improvement. Investigations can identify training or equipment deficiencies and provide valuable insights that help improve policies, procedures, and culture.

Failing to complete an investigation can also damage the department's credibility both internally and externally. It signals that the agency and its leader are not committed to addressing issues or maintaining integrity, potentially losing the trust of employees, elected officials, and the citizens they serve.

Finally, how a department handles investigations sets a precedent for future cases. Completing all inquiries demonstrates a commitment to due process and accountability. It enhances the department's professionalism and reinforces standards, which can positively influence employees' behavior and overall organizational culture.

LESSONS LEARNED: School Resource Officers

School Resource Officers (SROs) play a crucial role in ensuring the safety and well-being of students, staff, and the community. A successful SRO program builds positive and trusting relationships between law enforcement and students. Proper structure, clear policies, and mutual understanding are essential for a successful program. While not all-inclusive list, here are some crucial elements that should be included in a program:

- Establishing a Memorandum of Understanding (MOU) between the department and the school district is pivotal. This document not only aids in setting clear program goals and defining roles and responsibilities but also provides a structured method for evaluating the program's success.
- The roles and responsibilities of formal school discipline should be defined. The school resource officer should NOT administer formal discipline, such as detentions, suspensions, or expulsions. These decisions are the sole responsibility of the school personnel.
- The MOU should address and agree upon access to and use of school camera footage, body-worn cameras, student database information, and any other information-sharing practices.
- The department policies should identify documentation and reporting procedures. The MOU should address and agree upon any law enforcement documentation requested by school personnel.
- The school resource officer has the responsibility and discretion to take enforcement action according to state law, local ordinances, and departmental operating procedures. Continual collaboration with school personnel and their understanding of each student's needs may impact the decision to take enforcement action.
- A clearly defined process for selecting an SRO is helpful to ensure a good fit between the officer, the role of SRO, and the individual school. The department and the school administration can agree upon this selection process. If possible, the school administration should be involved in the selection process.
- SROs should be seen as proactive contributors to school safety. They should be trained in active violence incidents and play a key role in assisting the schools in developing emergency plans to respond to them.
- Policies must establish clear boundaries, such as ensuring that SROs are never alone with a student and prohibiting SROs from calling or texting students for reasons other than official business.

SROs are not just officers but valuable resources who can add a layer of safety to schools and help build positive relationships with students and the community. Their presence and involvement are crucial in maintaining a safe and nurturing school environment.

RECENT COURT DECISIONS

Slaybaugh v. Rutherford County, TN

US Court of Appeals for the Sixth Circuit, 2024

On January 23, 2022, Mollie Slaybaugh agreed to let her adult son, James Conn, visit and stay at her house. Officers arrived later that night, asked Mollie to step outside, and told her that Conn was wanted for questioning regarding a homicide. He was suspected of killing his ex-girlfriend, Savannah Puckett, a Robertson County Sheriff's Deputy. Mollie asked to go back inside, saying she would persuade her son to exit, but officers did not allow her back in the home. After waiting several hours, Mollie left to spend the night at her daughter's home.

By the next morning, officers had obtained an arrest warrant for Conn and a search warrant for the residence. During an hours-long standoff, Conn refused to emerge. Finally, officers fired approximately 35 tear gas cannisters into the house, entered, and arrested Conn. He eventually pled guilty to first-degree murder and other charges.

In January 2023, Mollie and her husband Michael filed suit against the county, the county sheriff's department, and their city for about \$70,000 in damages done to their home and its contents by the tear gas and cannisters, alleging that it constituted a "taking" without just compensation under the Fifth Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment, and under the Tennessee Constitution.

The district court dismissed the suits, finding that the police actions did not amount to a taking because they damaged the residence while enforcing Tennessee's criminal laws. The Slaybaughs timely appealed.

The United States Court of Appeals for the Sixth Circuit held that the Slaybaughs did not have a valid takings claim because the search-and-arrest privilege provides that police are not liable for damage to property that occurs when they carry out a lawful search or arrest, as long as the officers' conduct is reasonable. The court found no evidence suggesting the police acted unlawfully or unreasonably when they entered the Slaybaughs' home. The appeals court affirmed the district court's dismissal of both the federal and state constitutional claims.

People v. Prude

Michigan Supreme Court, 2024

In the early evening of May 30, 2019, Officer Deleeuw saw Douglas Prude sitting alone in a parked vehicle, with the engine off, in an area of a Kalamazoo apartment complex parking lot where criminal activity was common and trespassing had been an issue. He approached Prude, asked for ID, and inquired whether he was a resident. Prude declined to identify himself and said he was not a resident but stayed there with his girlfriend, who was a resident. Officer Belen arrived and, being familiar with Prude, identified him for Deleeuw, who went to his car to check the complex's trespass records. Meanwhile, Belen confirmed to Prude that he was being detained and was not free to leave. Prude started his car and sped away. He was later arrested and, in a jury trial, convicted of second-degree fleeing and eluding, and assaulting, resisting, or obstructing a police officer. The case navigated the courts, eventually ending up at the Michigan Supreme Court, which held, in part:

- Under the US Supreme Court's decision in *Terry v Ohio*, a brief investigatory stop is lawful only if an officer has an objectively reasonable, particularized suspicion that the specific individual being stopped is engaged in, or is about to be engaged in, criminal activity.
- An individual's presence in a high-crime area is not sufficient to support a reasonable, particularized suspicion they are committing a crime. It may support the existence of reasonable suspicion, but only if they engage in suspicious behavior. There is no evidence Prude engaged in any suspicious behavior to provide a particularized basis for a seizure. Further, a refusal to cooperate with police officers, without more, does not furnish the minimal level of objective justification needed. In some circumstances, individual factors that would be insufficient on their own to justify a *Terry* stop can, in the aggregate, provide reasonable suspicion under the totality of the circumstances, but only if the individual factors collectively are greater than the sum of their parts. Even viewed together, the facts in this case did not provide the officers an objectively reasonable particularized basis for suspecting that Prude was trespassing or engaged in criminal activity.
- Because the officers did not act lawfully when they detained Prude—a required element—there was insufficient evidence to support his convictions and Prude's convictions and sentences were reversed.

LEGAL INSIGHTS

Municipal Liability—Internal Investigations Can Save You

Plaintiffs who seek to impose liability on local governments under § 1983 must prove that “action pursuant to official municipal policy” caused their injury.

Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law. *Connick v. Thompson*, 563 U.S. 51, 60–61, 131 S. Ct. 1350, 179 L. Ed.2d 417 (2011).

What does this mean as far as internal investigations go? It means municipalities can be exposed to litigation if they fail to conduct thorough internal investigations, make findings of policy and procedure violations, and impose discipline and/or remedial training fairly across the board.

Moreover, these investigations, conclusions and discipline must be documented AND SAVED (even when no violation is determined to have occurred) so that if suit is filed, they can be used to prove that proper supervision, training and discipline has taken place.

**By Audrey Forbush
Plunkett Cooney**



MIOSHA MOMENT

Hey Chief, MIOSHA's at the Door

By Frank Demers, Loss Control Consultant

The best practice for managing an unannounced MIOSHA inspection is to be prepared in advance. MIOSHA safety officers often issue citations for “low-hanging fruit.” By reducing or eliminating low-hanging fruit at your agency as an every-day, default setting, you can avoid typical citations and, in doing so, create a safer workplace. Win-win.

Below is a list of common MIOSHA standards on which safety officers focus when visiting law enforcement facilities:

- Personal Protective Equipment (PPE)
- Lead awareness (particularly in the firearms range)
- Respiratory Protection
- Occupational noise monitoring documentation
- Hazardous Communications and up-to-date Safety Data Sheets (SDS)
- Bloodborne Pathogens annual training

MML Loss Control consultants have model policies and other resources to assist your agency with maintaining compliance with these standards. For more information, please visit mml.org.

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

Donald Mawer

Chief of Police
Frankenmuth Police Department



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
(248) 204-8040

matthew.heins@meadowbrook.com

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:
<https://mml.org/programs-services/risk-management/leaf/request-access-form/>

(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
1675 Green Road, Ann Arbor, MI 48105
(248) 204-8040**