

# 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

#### Last Chance Agreements

Last chance agreements are used when an employee's continued poor performance, following progressive discipline, leads management to offer a final opportunity to improve before termination.

Such agreements outline clear expectations within a designated timeframe, specify who will evaluate the employee's performance, and state that failure to meet expectations will result in termination.

Key elements to include in a Last Chance Agreement are:

- Participant's Summary of Conduct: Describe the employee's behavior or performance issues that led to the agreement and explain its purpose.
- Alternative to Termination: Clearly state that the agreement is being offered in lieu of immediate termination.
- Performance Expectations: Identify specific behaviors or performance standards the employee must meet. The more detailed the better. This will prevent misunderstanding if the employee is terminated.
- Timeframe: Define the duration of the agreement. Strike a balance between allowing sufficient time for improvement and avoiding an unreasonably extended period.
- Consequences of Non-Compliance: Include a statement that any violation of the agreement will result in immediate termination.
- Monitoring and Review: Detail how performance will be reviewed and who will be responsible for monitoring their progress.

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- **Grievance Waiver:** Include a waiver of grievance rights related to termination under the agreement. Ensure this is clearly stated and legally compliant.
- **Voluntary Acknowledgment:** The employee must acknowledge they are entering into the agreement voluntarily and understand the terms and conditions.

Before implementing a last chance agreement, review all applicable state and federal labor and employment laws. If the employee is represented by a labor union, collaborate with the union to ensure compliance with relevant sections of the labor agreement. Additionally, consult with a labor attorney to confirm that the last chance agreement is legally sound.

Last chance agreements can be effective tools for addressing serious performance issues. They provide a clear path for the employee to follow, foster a shared understanding among parties, and can save time, money and effort if expectations are not met and termination results.

## **LESSONS LEARNED: The Risks of Routine Driving**

While police vehicle operations during emergencies and pursuits are a critical aspect of law enforcement driving, they are only one part of a broader risk landscape. Routine driving also carries significant liability. In fact, most police vehicle claims stem from routine driving errors rather than high-risk situations. Common causes include backing into objects, striking parked vehicles, and failing to yield. These incidents are often preventable.

Given the high cost of vehicles and repairs, even minor collisions can result in thousands of dollars in damage. Beyond the financial impact, the loss of a vehicle disrupts operations and reduces departmental readiness. This underscores the need for consistent, proactive driver safety training and oversight. Officers collectively log millions of miles each year, yet ongoing training to reinforce safe driving habits is often minimal or nonexistent.

The following topics should be adopted for vehicle operations and training within your organization:

- Ensure all new employees receive comprehensive defensive driving training upon hire.
- Provide annual training to all officers on the department's Vehicle Operations Policy.
- Conduct practical driver training for officers at least once every three years to reinforce hands-on skills.
- Train supervisors on their responsibilities to implement policy, monitor compliance, and evaluate officer driving performance.
- Investigate all vehicle crashes thoroughly to identify root causes.
- Hold employees accountable for their driving behavior and adherence to safety standards.
- Review employee driving records annually. Past performance is a strong predictor of future behavior; unreported crashes or increased citations should prompt further evaluation.
- Regularly inspect all municipal vehicles to ensure equipment is functioning properly and remains in good working condition.
- Maintain detailed records of all training, policy reviews, crash investigations, and performance evaluations.
- Conduct an annual audit of vehicle crashes to determine if training, equipment, or policy changes are necessary.

By prioritizing regular training and reinforcing safe driving habits through strong leadership, organizations can significantly reduce the frequency and severity of incidents, crashes, and claims related to routine driving.

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## RECENT COURT DECISIONS

By Dave Sperry

### ***Romero v. City of Lansing***

US Court of Appeals for the Sixth Circuit, 2025

In December 2023, two City of Lansing police officers responded to a domestic disturbance call involving conflicting information about shots fired. Officers arrived on scene where Mr. Romero was standing outside of the open driver's side door of a car with his wife in the driver's seat. Officers drew their weapons and ordered Mr. Romero to show his hands and get on the ground. Mr. Romero, who was holding two cell phones, placed his hands in the air then slowly placed the phones on the ground.

The officers commanded Mr. Romero to the ground again, at which point he got on his knees and raised his hands in the air. Officers ordered him to get face down. He then slowly lowered his left hand across his body; said to the officers, "listen"; and raised his shirt to show the officers a holstered gun in his waistband, on his right hip. He then reached for the gun with his right hand, while raising his left hand in the air. The officers fired on and wounded Mr. Romero, who yelled out in pain and fell face down to his stomach and elbows. The officers stopped shooting. With his voice breaking, Mr. Romero said, 'I got you ... I got you,' and again reached for his waist. Both officers resumed firing at him. As he was being shot, Mr. Romero managed to slide his gun away from his body, out of reach. He later died on scene.

Mr. Romero's wife brought a 42 U.S.C. § 1983 claim of excessive force against the officers and the city. The district court granted defendants' motion to dismiss on the grounds of qualified immunity. Upon appeal, the US Court of Appeals for the Sixth Circuit reversed that dismissal and allowed the case to proceed to discovery.

#### **Appeals Court Findings:**

In its decision, the appeals court noted two implications of the U.S. Supreme Court's recent decision in *Barnes v. Felix*, which struck down the "moment-of-threat" precedent that previously limited a "reasonableness" analysis to the seconds before a fatal use of force. Firstly, the *Barnes* decision requires the court to look at *Romero* bodycam video evidence comprehensively, considering all prior events in its analysis rather than just one particular moment. Secondly, the court may find that the reasonableness of an officer's use of deadly force may decline as a situation progresses.

The court focused its decision primarily on arguments Ms. Romero made regarding the officers firing a second round of shots once Mr. Romero was wounded and on the ground. Ms. Romero argued that Mr. Romero was incapacitated at that point, that his actions were an attempt to surrender the firearm, and that by saying "I got you," her husband was telling officers he was complying.

The appeals court noted that, at the motion-to-dismiss stage of a case, the court may only consider video evidence to a limited extent, in order to determine whether the video blatantly contradicts or utterly undermines the plaintiff's complaint. The court found the *Romero* bodycam footage to be ambiguous. Therefore, with Ms. Romero's allegations not found clearly false and drawing all necessary inferences in her favor, as required, the court concluded she had plausibly alleged facts that would allow her claim to succeed on the merits and reversed the dismissal.

Notably, the court's analysis took into consideration Mr. Romero's actions throughout the encounter. The court's decision repeatedly references, in detail, the ways in which Mr. Romero complied with officers' demands as events progressed. It points out that he did not make overtly hostile actions and never gave any indication he would advance toward the officers. It notes "numerous contextual clues" that his final words were nonthreatening. The court concluded, "without any signal that [he] intended harm, the sole fact that he again reached towards his gun was not enough to justify firing again."

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## ***Eastep v. City of Nashville***

US Court of Appeals for the Sixth Circuit, 2025

In January 2022, Landon Eastep was walking on the shoulder of Interstate 65 and was stopped by a state trooper. The trooper advised Eastep he would pat him down and give him a ride off the interstate. Before the pat down was complete, Eastep took a box cutter from his pocket, held it up, moved away from the trooper, then back toward the trooper, who ordered Eastep to drop his weapon. Eastep did not comply or acknowledge the commands.

Over the next 30 minutes or so, other state and local officers arrived on scene until there were ten officers involved in a standoff with Eastep. The trooper first on scene informed the others that he hadn't completed the pat down so it was possible Eastep had another weapon and that Eastep appeared to have something in his pocket. During this time, Eastep did not comply with repeated commands to drop the box cutter and did not answer officers' inquiries about whether he had another weapon in his pocket. He paced around the shoulder of the highway while officers continued their attempts to reason with him.

Eventually, Eastep took two quick steps towards the officers and, at the same time, pulled an object from his pocket (that later turned out to be a vape pen) and pointed it at the officers, leveling it at shoulder height as you would with a firearm. Multiple officers opened fire; within a second, Eastep fell to the ground. Approximately two seconds later, two unidentified officers called for a ceasefire. After other officers had ceased fire, Metropolitan Nashville Police Dept. Officer Brian Murphy shot at Eastep for the first time, firing two shots with his rifle. Eastep died on scene. A Tennessee Bureau of Investigation report found officers fired approximately 33 shots in a matter of five seconds.

Mr. Eastep's wife brought a 42 U.S.C. § 1983 claim of excessive force against the officers and multiple agencies. The district court denied defendants' motion to dismiss on the grounds of qualified immunity. The Sixth Circuit reversed the district court's denial for all the officers but one.

### **Appeals Court Findings:**

The appeals court noted that, at the motion-to-dismiss stage of a case, the court may only consider video evidence to a limited extent, in order to determine whether the video blatantly contradicts or utterly undermines the plaintiff's complaint.

Mrs. Eastep alleged that officers opened fire on Mr. Eastep only because he reached for his vape pen and that they continued to shoot after he fell to the ground, incapacitated. The court found that the bodycam footage blatantly contradicted the first allegation, since the video shows officers began firing only after Eastep took threatening steps toward them, removed an object from his pocket, and pointed it at them from a shoulder-level position.

However, the court found that the video did not blatantly contradict the entirety of the second allegation because it showed Officer Murphy began shooting after Eastep had fallen to the ground. Therefore, the court considered the excessive force claims related to this allegation. Analyzing Eastep's threat within the totality of circumstances, it found that the shots fired by officers other than Murphy were objectively reasonable, but found that sufficient facts had been alleged to support a claim of excessive force against Murphy because he had shot at Eastep when Eastep was unmoving, on the ground, and no longer holding a suspected weapon. Even though this was only three seconds after the other officers stopped shooting, it was excessive in the court's opinion.

In its decision, the Sixth Circuit emphasized that, following the Supreme Court's decision in *Barnes v. Felix*, excessive force review turns on the totality of the circumstances, not a narrow "moment of threat" snapshot or any brightline temporal rule. Notably, the court expressly rejected any "five second rule" that would immunize continued deadly force for a set number of seconds without reassessment, finding that, once a suspect is incapacitated or neutralized, further force is "gratuitous" and clearly unconstitutional—even if only seconds later.

## **LEGAL INSIGHTS**

### **Municipal Motor Vehicle Liability**

Motor vehicle accidents often equal high exposure to the municipality that is not protected by governmental immunity.

While individual officers will not be subject to liability unless their driving was “grossly negligent” (behavior so reckless as to demonstrate a substantial lack of concern for whether injury results), the municipality which owns the vehicle is subject to the motor vehicle exception to governmental immunity.

MCL 691.1405 makes governmental agencies liable for bodily injury and property damage “resulting from the negligent operation” of a motor vehicle of which the governmental agency is owner.

As a result, simple negligence by officers is enough to impose liability against their agency.

**By Audrey Forbush  
Plunkett Cooney**



## **MIOSHA MOMENT**

### **Lead Awareness in Law Enforcement**

Lead exposure is an often-overlooked occupational hazard for law enforcement. Police officers face risks primarily from firearms training, where lead dust accumulates in ranges. Prolonged exposure can lead to serious health issues. Symptoms are often subtle and develop over time.

MIOSHA requires that agencies maintain a written lead awareness policy that includes the following:

- food or beverages may not be present or consumed, and tobacco products may not be present where employees are exposed to lead;
- a medical surveillance program must be implemented for each employee who is or may be exposed to elevated concentrations of lead;
- annual air monitoring must be performed in areas where lead exposure may be present; and
- procedures must be implemented for surface cleaning, ventilation, and air filtering.

Protecting officers from lead exposure ensures long-term health and department readiness. Contact your MML Loss Control Consultant for additional information.

### **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**

### **Kyle Bawks**

Chief of Police  
Perry Police Department



## **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  
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