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Reducing Law Enforcement Liability

Reviewing the High Risk Critical Areas

By Chief Louis Zook

Law enforcement is full of rules, regulations, policies, procedures, guidelines and directives. Many agencies have volumes of manuals spelling out in great detail every conceivable task that their officers may be required to face. Larger agencies generally have more written directives, but all agencies have more than enough to fill a small notebook. Obviously one of the reasons for this is to provide guidance and direction to the tens, hundreds, even thousands of officers that carry out their assigned duties every day. Another important reason is in an effort by agencies to reduce their exposure to liability which seemingly exists at every turn.

Risk management and liability reduction can be challenging to law enforcement because they do not have a choice but to respond when they are called to high-risk situations. The job of the police is often to get people to do things they may not want to do. Liability most often occurs when officers violate some legal mandate that comes from court decisions such as the U.S. Supreme Court, lower federal courts, and state courts. If law enforcement could somehow identify those situations that create the most risk, that are the most critical, that involve the most liability, then it might be possible to reduce the risk involved.

The good news is that liability is generally limited to a few recurring tasks. According to recent studies, nearly 95% of law enforcement liability comes from only twelve tasks. Specifically addressing these high-risk critical areas through policy and training can severely limit a department's and their officer's liability. The twelve high-risk critical areas requiring the most attention are:

- Use of Force
- Pursuit and Emergency Vehicle Operations
- Search and Seizure including Arrest
- Care, Custody and Control of Prisoners
- Domestic Violence
- Property and Evidence
- Off-Duty Conduct

- Sexual Harassment / Misconduct
- Selection and Hiring
- Internal Investigations
- Special Operations
- Dealing with the Mentally Ill or Emotionally
- Disturbed

If you think about it, this list really does make sense. Officers deal with one or more of these issues on a daily basis, it is only natural that these would be the areas that cause us the most problem and therefore should receive the most attention.

Clearly these twelve areas encompass many different tasks and responsibilities. Still, if an agency or an individual officer wanted to reduce their exposure to liability by 95%, they would only need to spend their training and policy efforts in these areas to accomplish this goal. Twelve areas spread over a twelve month period - one area a month for a year - and then review and start over again. Although not encouraged, if an agency did not focus on any other areas, they would still have accomplished a lot in that twelve month period.

Many agencies have policies already in place that address one or more of these areas. Unfortunately, most agencies probably do not have them all covered. If this is the case with your agency, what can you do to help fix the problem? After all, it certainly affects you as an individual officer - so you can't rely on the old "It's not my job" or "if the department wants me to know about these issues they'll tell me" excuses, especially if the action occurs on your watch or worse by you.

Even with policies in place, agencies need to check to see when they were last reviewed and revised. A policy should be a living, breathing document - just like the rest of the world we live in. Laws change every day, court decisions are rendered, and the expectation is that you and your agency are in the know, on the cutting edge of these changes, and are adapting daily to protect themselves and their community. It doesn't take a brilliant lawyer to ask for a policy manual after filing a claim, nor does it take a boy genius to see that the policy was written several years ago and then left to gather dust.

If your policies are current and up-to-date, what about training? A policy written but not trained is a waste of paper. Chances are good that the practice of the department is not what the policy states if there has not been training on a particular issue. If an officer is expected to carry out any task, he must receive direction [through policy] and have competence [through training] in that task. There are any numbers of ways to provide training, and a mixture of all of them is probably best to ensure that an officers needs are being met.

External training specific to certain topics is extremely beneficial, but can be costly, and only benefits those officers able to attend. In-house training on a monthly basis is highly recommended - with twelve topic areas in twelve months your monthly training calendar is easy to fill. Roll call training, while limited due to time constraints, is certainly an option for short discussions, policy reviews, and some good old "what if..." training scenarios. In addition,

lessons on DVD, webinars, and professional magazines, can all be utilized to enhance an officer's education and improve their ability to respond to whatever they may be facing.

The bottom line is that law enforcement is a dangerous business and the opportunities to make mistakes are numerous. Hopefully when mistakes are made they do not result in physical harm to an officer or anyone else, but even then, the harm to an agency's reputation and to its wallet can sometimes be devastating. It is incumbent upon each agency to protect itself and its officers through proper policy development and training - especially in those areas that have been shown to be high-risk.

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**Resource material includes "The Law and Best Practices of Successful Police Operations" by Jack Ryan, JD.

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