

Managing Risks Associated With Law Enforcement Vehicle Operation.

A Whitepaper by National Risk Control



Public Sector



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Purpose

The purpose of this paper is to provide an understanding of the law enforcement auto liability exposure and negligent vehicle operations for law enforcement and to specify commonly accepted practices of loss control for this area.

Executive Summary.

Quantifying the Exposure: Law enforcement auto liability is a concern for any law enforcement agency with vehicles and personnel on the road. Year after year, motor vehicle accidents are a leading cause of death in the workplace. They are also one of the leading causes of accidental death in the U.S. with over 19,000 fatalities in 2018, 234 of which were in Washington state (data provided by the National Safety Council). The good news is the numbers are improving nationally and on a statewide basis, with fewer vehicle accidents and fewer fatalities.

Understanding the Exposure—Police (Sheriff) Departments.

Police departments are units of municipal government charged with the enforcement of law and order and the protection of the citizenry. Duties include criminal investigations and apprehension, prevention of crimes and breaches of the peace, and improvement of residential quality of life.

The education and training to be a police officer is rigorous. According to the Bureau of Labor Statistics (BLS) applicants for police and detectives in all states are governed by civil service regulations. A candidate must be a U.S. citizen, be at least 20 years of age, and meet physical and personal qualifications (e.g., honesty, sound judgment, integrity, etc.). Physical examinations to test vision, hearing, strength and agility are also a part of the process.

Police officers performing patrol functions do not simply use their patrol cars to transport them from call to call, chase down a traffic violator or patrol their assigned areas; they also use their vehicles as their personal offices. Like typical offices, police vehicles are equipped with the forms and equipment necessary to complete reports and other paperwork. As in other offices, vehicles are used to conduct meetings and interviews. Sometimes officers even drink their coffee and eat their lunch in the car, just like most who work in a traditional office. Thus, patrol cars not only serve numerous functions but also present many distractions.

An added distraction is the use of in-car technology (GPS), which is equipment installed in a police vehicle to make an officer's job safer and easier. These technologies include items such as computers, video cameras, two-way radios, stolen vehicle locator devices, license plate readers, and manually operated light and siren controllers. These pieces of equipment can create a distraction to officers as they operate their cars.

In-car technology, such as computers, automatic license plate readers, cameras, etc., increases effective policing; however, the use of these devices can also contribute to driver distractions.

Understanding the Exposure: Police Liability—Negligent Vehicle Operations.

Police liability is a major concern in our society. Even the best police departments are subject to lawsuits, and in most cases, defense costs are the main source of loss. Controlling exposures begins with hiring the best possible people for the job. The hiring process should include written examinations, screening by an interview board, certified physical qualifications testing, one-on-one psychological examinations and a thorough background check of each applicant. Additionally, polygraph tests and drug screening to detect possible drug use should be conducted where not prohibited. All steps in the hiring process should be documented to aid in the defense against possible charges of negligent hiring.

Automobile liability for police departments will be extensive. Hazards faced by police will include driving at high rates of speed while trying to reach the scene of an accident or in pursuit of a suspect, traffic congestion, poor road conditions and inclement weather. The number of emergency and marked police vehicles will vary according to the size of the department.

A large number of serious injuries and lawsuits result from accidents in hot-pursuit situations. An officer engaging in high-speed pursuit in violation of department regulations may be held liable (as may the department and the public entity) for all damages and injuries caused by the pursuit, including those caused by the suspect. When officers drive at high speeds, they may endanger not only themselves but also the public. This situation is exacerbated by officers' inherent stress and distractions when responding to a high-risk, life-or-death situation. The public expects police officers to assume these risks at all times, under all conditions, without exposing those around them to an unreasonable level of elevated danger. Police executives and administrators expect the same.

Negligent vehicle operations: One Washington state risk pool reported that there were 399 law enforcement negligent vehicle operation claims during the 2000–2011 policy years. Over this time frame, an estimated \$7,588,020 in law enforcement negligent vehicle operation liability claims have been incurred, for an average claim of about \$19,018. These totals represent about 19.1% of the total auto liability negligent vehicle operations claims and about 53.2% of the auto liability negligent vehicle operations claims for that agency during that time.

Special Loss Control Considerations for Law Enforcement Auto Liability: Negligent Vehicle Operations

Vehicle multitasking: Officers are often required to operate a computer that can access various law enforcement databases and send messages to other cars or the dispatcher. Technology equipment installed includes cellphones, computers, video cameras, license plate readers, two-way radios, stolen vehicle locator devices, and manually operated light and siren controllers. These pieces of equipment can create a distraction for officers when they operate their cars. Most departments' policies and procedures prohibit operation of the computer while driving. It is a practice that officers on the road should avoid.

Field training: Evaluate the quality of police officer training. Field training should include realistic simulations of life-threatening situations. How extensive are the courses taught in civil liability? Due to the highly emotional nature of police work, stress management classes are recommended. Instruction in cultural sensitivity and in the handling of domestic conflicts is also desirable.

Specialized vehicle training: All officers should be given training in high-speed and pursuit driving in addition to instruction in defensive driving. Regulations and policies should be set in place regarding high-speed chases. An officer engaging in high-speed pursuit in violation of department regulations may be held liable (as may the department and the public entity) for all damages and injuries caused by the pursuit, including those caused by the suspect. Patrol officers should be required to radio their supervisors for permission to engage in a high-speed pursuit.

Officers may be injured in vehicular accidents while pursuing suspects at high speeds or while on daily patrol. The agency should require all drivers to partake in a thorough driver training program under normal and emergency conditions. The training needed prior to such activities requires both classroom and practical instruction. All department motor vehicles should be equipped with seat belts and their use should be enforced. Police officers also may be struck by vehicles while working at the scene of an emergency and therefore should wear reflective clothing.

Ongoing driver training: Since personnel respond to a variety of emergency situations, their training should include an array of police and emergency procedures. All police departments should have ongoing training programs involving all of their members. Continuous training is recommended for police officers and detectives to improve their job performance and to make use of developments and advances in law enforcement and legal circles.

Pursuit policies: Pursuit policies are designed to govern how officers respond during pursuits. As pursuit tactics evolve, an updated policy is key in ensuring the safety of both officers and the public. Ongoing training efforts should incorporate such policies; see the checklist of trainings provided later.

Board of inquiry and disciplinary actions: The agencies should establish firm policies on disciplinary actions that will be taken against employees who demonstrate a repeated disregard for good driving practices. Does the agency have a board of inquiry to review all vehicle collisions? Accurate records should be kept of each officer's car assignments and driving history.

Types of vehicles: What are the number, type, age and condition of the agency's vehicles? The department fleet may include patrol cars, emergency vehicles (such as bomb vehicles or SWAT vehicles), sports utility vehicles, and passenger automobiles for detectives and police brass. Specialized vehicle training should be designated and provided for each type of vehicle, and each driver should be certified in the operation of that vehicle prior to allowing its usage.

Maintenance of police vehicles: All police vehicles must be inspected daily and maintained on a routine basis. All older vehicles should be checked for adequate braking and pickup or acceleration; this is important for patrol vehicles that will be constantly on the road.

Use of unmarked vehicles: Unmarked vehicles being used as emergency vehicles or for undercover operations have a greater exposure to accidents because they are not as visible as marked vehicles. At a minimum, these vehicles should be equipped with portable emergency lights on the dashboard to be used in an emergency situation. Check state standards for staffing, marking or maintaining emergency vehicles.

Frequency of travel and radius of operations: What is the agency's frequency of travel and radius of operations? Patrol radiuses differ from agency to agency. Most business-related travel will be local and often within the agency limits or jurisdiction. Police may need to travel daily to either patrol or conduct surveillance. Sheriffs may travel daily to meet with the agency council and others. Investigators may need to revisit scenes of crimes, interview witnesses and/or victims of crimes at hospitals or residences, call on other legal professionals (such as detectives in other regions, prosecutors or attorneys), and interview members of the local press. In some cases, police may be requested by another town for assistance. Does the agency have mutual aid agreements with any local governments?

Hazards of routes: Consider the hazards of typical routes. Most often the agency's drivers will be faced with driving to a scene of an accident under severe time constraints. Other hazards include police officers being called to a crime in progress, whereby they may have to go in silent (i.e., no lights or sirens), which increases the risk of vehicular accidents. In an effort to respond to emergencies or natural disasters, drivers may be required to drive at high rates of speed or may engage in reckless driving practices. How much emphasis does the agency place on drivers adhering to set speed limits and safe driving practices? According to the National Law Enforcement Officers Memorial Fund, 35 police officers were killed in auto accidents across the country in 2012. Are drivers informed of any road construction and made aware of alternate routes? Because most of their travel will be within a localized area, the drivers should be familiar with the roads.

Traffic congestion and rural roads: The agency's location impacts the level of traffic congestion. Urban areas may experience greater traffic volume, while rural areas are likely to have unpaved roads.

Increased fatigue: Since many police patrols will take place during evening hours, drivers will often be required to drive during hours of darkness. Aside from lowered visibility, driving at such times can lead to greater fatigue.

Inclement weather: Since police officers must respond to scenes of accidents as well as patrol the community in all types of weather, it is quite probable that accidents during inclement conditions (such as ice, rain, fog, and snow) will occur. Drivers should be required to turn on their vehicles' headlights and use extra caution when driving in bad weather.

Accident reports: If the agency's drivers are ever involved in an accident with another vehicle, do they provide detailed reports of the incident? It is recommended that the agency maintain an accident register after an accident has occurred. It should contain the following information: the time and place of the accident, the driver's name, and the number of resulting injuries and/or fatalities.

Accident review board: Does the agency have an accident review board to evaluate all vehicle collisions? Are all collisions that are found to be preventable reviewed with the driver and his/her supervisor? Has the agency established firm disciplinary policies dictating actions to be taken against employees who demonstrate a repeated disregard for safe driving practices? Are these policies enforced consistently?

Minimum driver requirements: What are the ages, training levels and experience levels of drivers? The training and experience of emergency vehicle operators are all important. What methods are used for driver selection? Are driving records checked on a regular basis? Does the agency employ any drivers under the age of 25? If so, a youthful operator exposure would exist.

Vehicle maintenance: Who is responsible for maintaining the agency's vehicles? Vehicles should be kept in good condition, repaired promptly and inspected regularly. It is a positive sign if the agency's vehicles are scheduled for periodic maintenance based on mileage or time, since patrol vehicles may exhibit excess wear and tear due to constant use. What is the agency's practice? Employees should not be permitted to repair or assist in the repair of any department-owned vehicles.

Checklist of Trainings.

Do you have a written policy on each of the following?	Yes	No
Vehicle pursuit		
Termination of vehicle pursuit		
Responding to domestic violence		
Handling individuals under the influence		
Critical incident team or SWAT		
Use of in-car technology (cellphone, etc.)		
Seat belt use		
Within the previous 36 months, have all officers completed the following training conducted by a certified instructor?	Yes	No
EVOC		
Vehicle pursuit		
Termination of vehicle pursuit		
Training on in-car technology		
Documentation		
Within the past 12 months have all officers completed refresher training in the following?	Yes	No
Vehicle pursuit		
Termination of vehicle pursuit		
Use of in-car technology		
Is there an up-to-date training folder for all members		
Have all members (employees and reserves) signed a statement that they have reviewed the department and agency policies and procedures manual?	Yes	No
They understand it.		
They agree to follow the policies.		
Within the past 12 months, has your policy manual been reviewed to ensure compliance with changes in laws?	Yes	No

Fleet safety program note: This is a sample self-evaluation form. Please indicate whether you have the following items in place or not, and indicate the effectiveness of each program element—5 (Best) to 0 (Not in Place). If you feel like you should not rate a particular question skip it and move onto the next.

Check the appropriate box and provide a rating number for each of the following items.	Yes	No	N/A	Strength (0-5)	Comments
Fleet safety director					
Written safety manual					
Driver hiring criteria: 1-800 How's My Driving					
For passenger cars					
Trucks (if separate criteria applies to truck drivers)					
MVRs					
New driver (Always done = 5)					
Current driver (Always done = 5)					
Prospective driver application					
Background investigation					
Medical examination					
Controlled substance testing					
Driver applicants					
Random					
Post-accident					
Ongoing training					
Accident investigation					
Maintenance					
Annual driver reviews					
Use of					
1-800 How's My Driving					
Driver call-in					
Road observation					
Tachographs/engine computer					

Provide any appropriate additional comments if necessary:

Auto insurance policies also include property damage liability coverage for objects other than automobiles.

Definitions

Liability insurance: The Insurance Information Institute (III) defines liability insurance as the legal obligation a policyholder is under to pay in case of a car accident. Liability insurance protects the policyholder and pays monetary compensation, up to the policy limit amount, to the driver/passenger(s) injured in the other vehicle or for other property damaged (including autos directly and indirectly involved in a car accident). Liability insurance is categorized as bodily injury and property damage coverage.

Bodily injury liability: The driver who is at fault will pay the injured driver/passenger(s) in the other car through his bodily injury liability coverage, up to the policy limit amount. Bodily injury coverage should not be confused with personal injury protection (PIP), also known as medical payments. PIP coverage is for a policyholder's injuries and personal medical bills.

Property damage liability: Auto insurance policies also include property damage liability coverage for objects other than automobiles. Fences, light poles, trees and guardrails are some of the other objects covered under the property liability coverage during a car accident.

Liability insurance duties: Liability insurers have three major duties: 1) the duty to defend, 2) the duty to indemnify and 3) the duty to settle a reasonably clear claim. 1) The duty to defend is triggered when the agency is sued and in turn tenders defense of the claim to its liability insurer. 2) The duty to indemnify means the duty to pay all sums for which the agency is held liable, up to a set policy limit. 3) In some jurisdictions, there is a third duty, the duty to settle a reasonably clear claim against the agency.

Negligence: Negligence is created when unintentional harm is caused to others. To prove negligence, an injured person must show that the property owner/occupier breached a duty owed to the injured person by not meeting the standard of care required by law. The injured person also needs to prove that there was an injury and that the breach of duty resulted in the injury.

Sample Fleet Safety Policy/Procedure.

Safety policy: The safety policy should establish the importance of safe vehicle operations to clearly communicate the commitment to safety and to establish the processes through which vehicle operations by agency personnel will be managed.

Driver responsibilities: As a driver of critical equipment and a personal representative of the agency, a driver has a role that gives them more responsibility than virtually any other role within the agency. Therefore, drivers have a responsibility to the agency to operate this equipment in a safe and proper manner.

Driver qualification: During the hiring process, all applicants being considered for placement may have their driving records reviewed. This will specifically check for a poor driving history or indications of poor decision making while operating motorized vehicles. The results of the driving record review will be made known to the hiring manager, who may take the history into consideration when making hiring decisions.

Motor vehicle record check—right to review record and conduct record checks: The agency has the right to review the driving record of any agency employee or applicant for agency employment before he/she is authorized to drive an agency vehicle. Motor vehicle records will be obtained on all drivers prior to employment and no less than every _____. A driving record that fails to meet the criteria stated in this procedure, or is considered to be in violation of the intent of this procedure, will result in a loss of the privilege of driving an agency vehicle.

Unacceptable record/history: If an individual's driving record reflects deficiencies that would disqualify them according to the established standards, the employee or applicant may not drive any agency vehicle or drive in the course of agency business.

Safety—drivers' responsibilities: Employees operating vehicles shall:

- Report all vehicle-related incidents immediately to their agency supervisor or as soon as possible.
- Drive defensively in a safe, courteous and responsible manner.
- Operate a vehicle in accordance with set procedures and state laws.

Safe vehicle operations: In order to operate agency vehicles safely all vehicle operators will inspect the vehicle and comply with the requirements for ensuring a safe vehicle.

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Supervisor responsibilities: Prior to allowing any employee to operate a motor vehicle the supervisor shall:

- Ensure that the employee has the proper license(s) to operate any vehicle that the employee is assigned to operate and that the license is valid. This will be confirmed at least once per year.
- Ensure that the employee has reviewed and acknowledges his/her understanding of this vehicle policy.
- Ensure that the employee has been properly trained to operate any vehicle that the employee is assigned to operate. This may require the supervisor to identify or create appropriate training materials specific to the vehicle(s) in order to ensure that the employee's skills will meet agency and client expectations.
- Ensure that the employee is properly trained on any specific driving requirements of a client or that pertain to a specific facility.

Vehicle incident procedures and responsibilities: There will be a formal accident review conducted on each accident to determine the cause and how the accident could have been prevented. In the event of a collision, accident, or damage involving an agency vehicle or personal vehicle used in the course or scope of agency business, the driver and his/her supervisor must comply with the accident procedure.

Inspection—daily pre-drive DOT-regulated vehicles: Each commercial motor vehicle is to be inspected on a pre-trip basis. Each driver will complete a daily vehicle inspection report. This inspection report is to be done at the end of each day's work. Check the appropriate box as to the condition of your vehicle. If safety-sensitive defects are noted, they must be repaired, and the operator must ensure the mechanic who corrected the defect sign the log for that day in the space provided.

Inspection—daily post-driving DOT-regulated vehicles: For any vehicles subject to the DOT regulations, a daily inspection report listing all defects is required to be completed and signed at the end of each workday on an inspection report. This report must list any defect or deficiency that would affect the safety of operation or result in the vehicle's mechanical breakdown. It should be noted on the report if there are no defects or deficiencies. The driver must sign this report each day.

Inspection—noncommercial motor vehicles: All noncommercial motor vehicles must be inspected at least weekly. If any safety sensitive defects are noted, they must be repaired, and have the mechanic who corrected the defect sign off on the repair.

Inspection—casual use of agency vehicles: Operators who use motor pool vehicles or use an agency vehicle for conducting official agency business on occasion must inspect the vehicle for safe operation and any damage prior to usage. If any safety-sensitive defects are noted, they must be repaired, and have the mechanic who corrected the defect sign off on the repair. Any vehicle damage must be noted on an appropriate vehicle inspection report prior to usage. Note: There should be no casual usage of DOT-regulated vehicles.

Maintenance: Drivers are required to properly maintain their agency or personal vehicles used on agency business at all times. Vehicles should not be operated with any defect that would inhibit safe operation during current and foreseeable weather and lighting conditions.

DOT inspection: The drivers of all vehicles subject to the inspection, repair and maintenance requirements of Part 396 of the DOT regulations shall be familiar with those regulations and comply with them in all respects.

Vehicle files: Each operations manager will keep or designate a person to keep a separate file for every vehicle under his/her control. This file will contain all maintenance reports and information. Each vehicle file must be kept for at least six months after retirement of the vehicle.

Periodic maintenance: The maintenance and inspection items must be performed at periodic mileage or time intervals in accordance with all manufacturers' guidelines. Recommended inspections are performed at designated intervals.

Personal use of agency vehicles: Agency vehicles are provided primarily for agency purposes; however, occasional personal use is permitted. Personal use is a privilege extended only to the authorized employee. The privilege of personal use may be withdrawn at any time without notice by the agency.

Use of personal vehicles on agency business: There may be an occasional need to operate a personal vehicle on agency business. This should be the exception, not the rule, and only allowed when authorized.

Insurance for personal vehicles on agency business: The agency does not assume any liability for bodily injuries or property damage the employee may become personally obligated to pay arising out of an accident occurring in connection with operation of his/her own car. The reimbursement to the employee for the operation of his/her car on agency business includes the allowance for the expense of automobile liability insurance. You are required to have state required minimum limits of liability insurance.

Orientation—new drivers: All employees being asked to drive an agency vehicle larger than a three-quarter-ton pickup truck for the first time will first be given a road test by an experienced driver. Larger agency vehicles are to be driven by the most experienced driver available for driving duty. No employee shall be assigned to drive an agency vehicle unless he/she is capable of driving the type of vehicle being assigned.

Training: Agency employees should receive initial safety training and orientation in relation to their vehicles and each new vehicle they will operate. Thereafter, each agency employee should attend or participate in defensive driver training at least once every three years. If there are any circumstances such as incurring moving violations, vehicle accidents or general unsafe driving, the driver may need remedial driver training.

Storage, security and theft of vehicles: In the event of theft of an agency vehicle, notify local police immediately. All agency vehicles left unattended, regardless of the length of time, are to be locked. All agency vehicles must be returned to their designated yard and/or parking lot at the end of usage or shift unless authorized otherwise. All keys must be returned to their proper caretaker, and the proper return form must be completed with the caretaker.



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About the Author.

Tim has been a risk control consultant in the insurance industry for 29 years, servicing and surveying customers for all areas of safety, including workers' compensation, property, general liability and fleet. He joined Gallagher in 2000 and is responsible for the coordination of all risk control activities for Gallagher customers. In addition to performing surveys and service work directly for customers, Tim is also responsible for monitoring the risk control activities and services of our insurance carriers. The risk control service activities that he performs include the evaluation of safety program effectiveness, training on safety program issues, and assistance with business interruption and contingency planning issues.

Prior to Gallagher, Tim worked for two multiline Fortune 500 insurance carriers: Liberty Mutual Insurance in Glastonbury, Connecticut, from 1989 to 1992, and Reliance Insurance Company in Seattle from 1992 to 2000. Tim serviced industrial and municipal clients including manufacturers, distributors, cities, towns and counties, as well as many school districts.

Tim graduated from University of Massachusetts Dartmouth with a degree in Mechanical Engineering Technology. He is a member of the American Society of Safety Engineers (ASSE), the National Fire Protection Association (NFPA) and the National Association of Safety Professionals (NASP).

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