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RISK REDUCTION CERTIFICATE PROGRAM



Resource Manual

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INTRODUCTION

The Risk Reduction Certificate Resource Manual is designed to serve as a companion document to Policy Directives and provides information that will assist agency leaders as they implement the program's requirements. Each chapter in this manual is organized to parallel the policy directives and are composed into three sections.

The first section identifies specific 'areas of concerns' that staff composing the policies should take into consideration and address. The second area is a 'discussion' of the topic that provides a broad overview and background information on the topic. The detail of discussion varies according to the complexity of the topic. Finally, links are provided to relevant Model Police Operations Manual Policies, statutes in the Official Code of Georgia (OCGA), and free on-line training on the Georgia Public Safety Training Center (GPSTC) website that will assist in creating the relevant policies.

As agencies develop their policies, it is important to remember the 'Directives' designate what activities must be completed. How the agency completes the tasks is dependent upon several variables including available resources, structure of the governing authority, and organizational culture. The policy needs to mirror the processes department officers and employees are expected to follow to accomplish the required functions.

It is strongly encouraged agency leaders have the department's legal counsel review the final draft of high liability policies prior to implementation. Once the manual is issued to staff, each policy should be reviewed with staff to ensure they comprehend its requirements, resolve any questions, and agree to comply with the directives prior to its effective date.

Finally, each policy directive has four components, including the policy requirements, training, reporting/documentation, and supervisory review. Officers' training of the policy manual should be formalized and documented.

Equal Employment Opportunity Statement

- Clearly outline the agency policy is to ensure all persons are given an equal opportunity for employment regardless of race, sex, creed, color, age, religion, national origin, or physical impairment.
- Procedure for filing complaints relating to EEO are must be clearly outlined.

Job Descriptions

- A job description is based upon findings of a job analysis.
- The tasks performed along with the frequency and criticality should be identified along with working conditions, licenses/certifications/credentials required, tools and equipment routinely operated.
- The final document should provide an accurate summary of the job duties and standards of performance.
- Staff must understand expectations and how to perform each task to standard.
- All tasks be performed with reasonable accommodation, unassisted and without delay.

Selection Processes

- It is critical the standards for employment and the steps taken to evaluate candidates' qualifications are job-related and not illegal. The agency must identify the standards of employment to include education, training, criminal/driver history, etc.
- Records of the selection processes should be maintained to ensure all actions are done in a consistent, fair manner, and avoid adverse impact.
- A standard application for employment should be completed by all candidates to determine if the individual meets minimum standards for employment. Persons conducting the interviews must be trained to conduct employment interviews.
- The interview questions should be written and asked in the same manner with all candidates. Responses should be recorded for each question. Rating should be based upon established criteria.
- The directives require a thorough background investigation be conducted by a trained investigator to identify isolated serious issues or a pattern of other behaviors that may affect an individual's ability to perform their duties. An officer's work history or background can be used to impeach him as a witness in a prosecution. Because of this, the background investigator must conduct an in-person review of the individual's

personnel file at his previous employers. An exception has been provided for previous employers are located in another state and/or are more than 200 miles from the department. Still, documentation of their employment with the previous agency must be obtained. Failing to utilize common business practices to identify past misconduct can lead to a finding of liability against the agency and its leaders if it is determined the agency knew or should have known of the conduct or other issue(s).

- The directives require standard psychological exam or personality inventory be used to identify any concerns regarding the applicant's 'fitness for duty'.
- Having a medical/drug screening ensures the potential employee is physically capable of performing the job for which they have applied. In addition, testing for drug usage is critical for ensuring a drug-free workforce. Again, this information may prove critical to identifying an unnecessary and avoidable workers' compensation claim. All medical and drug screening can only be performed after a conditional offer of employment has been provided to the applicant.

Rules of Conduct

- Standards of conduct must be identified to establish performance expectations.
- These rules establish the foundation for guiding good behavior, identifying poor performance, and when necessary to take the appropriate disciplinary action.

Disciplinary Processes

- The administration of discipline must be fair and consistent.
- Articulation of and adherence to these processes are critical for ensuring appropriate 'due process'.
- Georgia is an "At-Will" employment state. This means any employee may be terminated at any time, provided it is not prohibited by law. However, some governing authorities' policies may give employees more rights. This must be determined when pursuing disciplinary action.

Chapter 1: Human Resources/Equal Employment Opportunity

Discussion

Having a safe community and a police department that is regarded as responsive, fair, and professional is an important component of the jurisdiction's on-going economic and community development. To support this endeavor, it is critical leaders view the department and its employees as an investment.

Staffing typically accounts for 85 to 90 percent of law enforcement agency's budget, making its employees the most valuable asset and resource. Hiring a new employee is a time-consuming, expensive process. Failing to properly assess each candidate and make informed hiring decisions can be cost more in the long term. Because of this, it is important to identify, attract, and retain the most qualified individuals who 'fit' with the department. Once new employees are onboarded, agencies must provide opportunities to help each individual to develop to meet the organization's and their personal needs.

The purpose of these 'directives' is not to require small agencies to implement an in-depth personnel system. Rather, directives related to human resources are designed to address areas with the greatest likelihood of resulting in litigation. This narrative has been created to provide the reader with a basic overview of critical talent management concepts as it relates to mitigation of liability. These directives also help to minimize exposure by implementing processes to prohibiting inappropriate conduct, retaining a bad employee or failing to provide due process when taking an employee's "property". All of these issues are applicable to every department regardless of its size.

Liability associated with hiring employees is typically incurred in one of three ways. First, the violation of a person's constitutional rights is alleged to have been inflicted by a person under of color of law under 42 USC 1983. Under this statute, the standard of proof is the officer 'knew or should have known' the policy or practice taken was a violation of a 'clearly established' law. Second, the action was a violation of the Federal Equal Employment Opportunity (EEO) laws.

These include:

Title VII of the Civil Rights Act of 1964 as amended	Prohibits employment discrimination based on race, color, religion, sex or national origin. Also, prohibits 'hostile work environment' based on these protected categories as well as sexual harassment or pregnancy-based discrimination.
Equal Pay Act of 1963 (EPA)	Protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination
Age Discrimination Act of 1967 (ADEA)	Protects individuals 40 years of age or older
Title I and Title V of Americans with Disabilities Act of 1990 as amended (ADA)	Prohibit employment discrimination against qualified individuals with disabilities
Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)	Prohibits employment discrimination based on genetic information about an applicant, employee, or former employees
Civil Rights Act of 1991	Provides monetary damages of intentional employment discrimination.

A third area of potential litigation would include the violation of the Fair Labor Standards Act that requires law enforcement agencies to pay non-exempt (hourly) sworn officers overtime after the proscribed levels are exceeded during a “work period”. Civilian employees must be paid overtime after exceeding 40 hours in a seven-day work week.

To successfully address these issues leaders must take a proactive approach to lead their personnel. Prior to initiating any of these personnel related activities, an agency must conduct a job analysis, develop job descriptions, and implement consistent, job-related, selection processes. Once employed, supervisors must ensure officers comply with established standards of conduct and when necessary initiate appropriate corrective action.

Job Analysis

A job analysis is a systematic approach for identifying the frequency and criticality of key tasks and the essential job functions of the position. Essential job functions are defined as those functions an employee must be able to perform unaided and without delay or with the assistance of a reasonable accommodation. A job analysis is the cornerstone for ensuring ‘personnel’ decisions are accurately identified and job-related. Since there are a variety of acceptable

techniques for conducting this analysis, the agency need not employ a complicated or in-depth process. It is recommended; however, department staff employ the assistance of a human resources professional when conducting the analysis. Key personnel, including incumbents and direct supervisors must also play an integral part of the analysis.

Job Description

Using information gathered during the analysis, clear and accurate job descriptions should be created. A well-designed job description accurately describes tasks completed by the individual assigned to the position, standards of performance, tools and equipment routinely used, typical working conditions, physical requirements, and required credentials (i.e. driver's license, POST certification).

Selection Processes

The purpose of the selection process is to identify the best qualified individual(s), who meet the department's standards of employment, and fit with the agency. While there are a variety of techniques to achieve this goal, these policy directives require:

- Employment Standards;
- Application;
- Oral interview;
- Background investigation;
- Conditional Offer of Employment;
- Psychological or Personality Inventory;
- Medical and Drug Screening.

Employment Standards. The first step for the employment process is to determine the employment standards. These standards are identified by the job analysis and articulated in the job description. For example, some standards of employment often listed in the job description include the minimum requirement for a person applying for the position including: age (i.e. 18 under POST rules or recommended 21 years of age), education (i.e. high school diploma or GED or 2 years of college), arrest record, driving history, and training. Some agencies include a more detailed list of hiring standards in their operational policy to guide the background investigator.

As part of this process, it is critical the agency include the physical requirements including sitting, standing, walking, running, lifting, sight, hearing, talking, as well as other activities an employee can be expected to perform. This information is crucial for medical professionals to make informed decisions regarding an individual's ability to perform the various functions. It is also instrumental for determining if an officer is injured (on or off-duty) can return to duty without restrictions.

Once the standards are established, leaders must ensure each person employed meets the standards.

Application. The department should require all candidates complete a standard application for employment. Most communities already utilize acceptable applications. At a minimum, the application should provide for biographical information, specific residential addresses within the previous 10 years (including owned or rented as well as any roommates), EVERY employer during the previous ten years, military service, education attainment including a diploma or official transcript, law enforcement certification/training credentials (within Georgia or other states), work related references, and personal references.

A review should be conducted of all applications and compared against the standards identified in the job description to determine the most qualified candidates. Some agencies choose to interview all applicants who meet minimum qualifications. Alternatively, departments that receive a large number of applications, may choose to make a list of employment standards and check each applicant's qualifications against these standards. This will enable the agency to limit the interviews to the most qualified.

Oral Interview. The oral interview is the most common selection procedure used by employers. The purpose of the interview is to confirm information identified in the application and develop an overall understanding of the individual. During the interview, it is critical the agency use the same questions for all candidates. If probing or clarifying questions are used because of a candidate's response, the question and the responses should be included on the interviewers' sheet. In addition, there are a number of potential biases that can adversely affect an interviewer's judgement. Because of this, persons conducting the interviews should be trained in how to properly and legally interview candidates.

Background Investigation. The background investigation is based on the premise that past performance is the best indicator of future behavior. Many personnel problems are directly linked to making a 'bad hire'. In other words, a trouble employee who should never have been hired. Because of this, the background is often considered the most important selection processes. The purpose of the background investigation is two-fold. First, to confirm the information provided by the candidate regarding his qualifications and credentials. Second, determine if there is anything in the individual's background that would adversely affect his ability to perform the job or may negatively reflect on the department for employing them.

These directives require the investigator to personally conduct site visits with the former employers to review their personnel and training records. In addition, the investigator should also interview personal/professional references to determine if there is any information in the

applicant's background that would affect their ability to perform as an officer. If the agency does not have a trained investigator or they do not have sufficient staffing to allow in-person site visits. Some agencies provide detailed hiring standards in their policies. These detailed policies enable the background investigator to objectively determine if the individual meets these standards. It is important to note the investigator reports a factually based report and should not decide if the individual should or should not be employed. That decision is to be made by the hiring authority.

Conditional Offer of Employment. Prior to requiring a candidate to submit to a medical/drug screening or psychological exam, the department must provide a conditional offer of employment. Only after the agency provides this offer can the candidate be required submit to a medical and drug screening.

Medical/Drug Screening. Agency leaders should never make any assumptions about an individual's physical or mental health as it relates to their ability to perform the job. This determination can only be made by a medical professional. Having all candidates submit to the medical and drug screening is critical to ensuring the individual is physically capable to perform the essential job function or with reasonable accommodation. Examples of reasonable accommodation may include eyeglasses, hearing aids, etc. It is also important to evaluate the candidate for pre-existing injuries or conditions that preclude them from being able to perform the essential job functions. To ensure the medical professional can properly assess the individual, the agency should send the job description including the essential job functions of and physical requirements of a person serving in the position.

If the candidate is to be sent to the academy, Georgia Peace Officer Standards and Training (POST) require the physician be credentialed as a (M.D.) or (D.O.). POST will not accept a physical that has been reviewed only by a Physician's Assistant (P.A.) or Nurse Practitioner (N.P.).

Psychological/Personality Inventory. It is important for the agency to engage the services of professional psychologist or psychiatrist to conduct an evaluation to determine the candidate's ability to withstand the stresses and requirements associated with the position of a police officer. It is highly recommended this mental health professional be experienced in testing as well as working with law enforcement officials.

Rules of Conduct. An essential part of ensuring a well-operated organization is to provide clear directives regarding expected performance standards that include clearly articulated prohibited behavior. Each employee must record they have read, understand and agree to comply these employment guidelines. Failure to comply with established standards of performance should result in appropriate corrective action. It is imperative for supervisors to ensure staff are complying with standards of conduct. Failure to hold staff accountable could expose the agency and local governing authority to liability if they fail to act when department officials knew or

should have known of an employee's propensity to violate individual's rights and take no action. For example, an officer uses excessive force and the department fails to take corrective action.

Disciplinary Processes

Maintaining a thorough and fair disciplinary process is critical component for ensuring the consistent and legal management of employees. Oftentimes, leaders view discipline as being synonymous with punishment. A well-disciplined agency is not well-punished. Rather, all the employees follow the agency's directives in a disciplined manner. Unfortunately, many supervisors tend to focus on these processes to administer disciplinary punishment for poor performance. In the best operated departments, the process outlines the management of consequences for positive as well as poor performance.

Generally, the concept of management by consequences is based upon the premise that every action has a consequence. In the work environment these consequences are: positive reinforcement, negative reinforcement, extinction, punishment.

Positive reinforcement occurs when the supervisor/leader takes a positive action to **improve** the employee's performance. Depending on the frequency and significance of the action the positive consequences may range from an informal compliment to a formal award and public recognition.

Negative reinforcement is utilized when the supervisor/leader takes a negative action to **improve** the employee's performance. This may range from a counseling session to a letter of reprimand. Unfortunately, it is hard for some persons to distinguish what action may be viewed as a corrective action as compared with a punishment.

The third category for management through consequences is 'extinction'. This is simply ignoring the employee's behavior. Supervisors often ignore good behavior because they view it as being what is expected of the employee. At the same time, they may ignore bad behavior for a number of reasons. For example, the supervisor may believe the employee was having a bad day, will correct their behavior on their own, or feel that is just how that employee is. Operationally, when good behavior is ignored, it will eventually go away. At the same time, if poor performance is ignored, it only gets worse.

Fourth, punishment is taking some action to **stop** the employee's poor performance. The difference between negative reinforcement and punishment is negative reinforcement is designed to **improve** the individual's performance and punishment is designed to **stop** the poor performance. This is generally assumed to include more punitive actions including suspension, demotion, transfers or terminations. However, punishment is determined by the employee's perception of the action.

Finally, it is important to recognize 'punishment' should always be the last alternative for a supervisor. Except for isolated instances, if the supervisor was properly managing their personnel, they should have recognized the employee's poor performance and initiated steps to correct the behavior. At the same time, when punishment is administered other employees are observing the actions being taken. Oftentimes, they are not aware of all the circumstances in the situation. Not knowing all the factors considered in making the decision could adversely affect their perception of the agency if they view response to be unfair or capricious.

Procedurally, the department's directives should provide descriptions of the techniques to reward as well as correct or punish bad performance. On the positive side, this may include:

- Informal Recognition/Compliments/Appreciation
- Letters of Recognition/Commendation/Appreciation
- Formal Awards.

This is contrasted by the steps available for correcting poor performance including:

- Counseling
- Oral warning or reprimand
- Formal letters of warning or reprimand
- Demotion
- Suspension, and
- Termination.

The disciplinary procedures should also identify the level of authority for each supervisor, what actions may be appealed, and the steps to appeal a disciplinary action. It is critical to have some form of appeal to ensure the employee is provided 'due process' as required by the 14th Amendment.

Regardless of the action taken, (i.e. informal recognition/correction, counseling, oral warnings/reprimands, or more severe punishment), it is critical the supervisor keep a detailed, written record of the circumstances and actions taken regarding good and poor behavior. Otherwise, the supervisor has no record to support the progressive measures taken to the sustain or correct their performance as well as hold employees accountable to the department's standards of conduct. In the past, some agencies have permitted records of personnel actions to be removed from an officer's official file. This practice is unacceptable. Each employee's employment history involves positive and negative performance. Having documentation of holding persons accountable is critical to ensuring behavior can be addressed with the individual as well as other similarly situated individuals.

Finally, it is highly recommended all supervisors be required to attend supervisory training. At a very minimum, they should attend training on how to properly address poor performance and document their corrective action. In the best of circumstances, the individual attends the supervisor development training prior to being placed into the position and given the responsibility of supervise others.

Reference:

Model Policy and Procedure Manual, “Chapter 5, Conduct”

Model Policy and Procedure Manual, “Chapter 6, Grievance”

Model Policy and Procedure Manual, “Chapter 3, Organization – Administration”

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Chapter 2: Evidence and Property

Areas of Concern

- Officers must be aware of the various types of evidence and the proper protocols for collection and storage.
- Once collected, control of evidence must be maintained at all times.
- The department must provide proper facilities for the temporary and long-term storage of evidence/property. Part of the long-term storage should include separate more secure areas for sensitive/high value items including drugs, money, jewelry, and weapons.
- When sexual assault kits are collected, the evidence custodian should ensure they are transferred to the crime lab as soon as possible.
- Steps must be taken to ensure proper accounting procedures are taken of all evidence/property within the agency's control.
- Management of the evidence room must be an organizational priority. Otherwise, items will become lost, stolen, damaged, or tainted. In addition, if steps are not taken to regularly purge property/evidence as needed the area and function will become unmanageable.
- State law has specific guidelines for the returning, selling, and destroying firearms.

Chapter 2: Evidence and Property

Discussion

The proper operation and maintenance of an evidence room is a difficult and time-consuming process for all agencies. Identification and collection of evidence is a critical component for assuring successful resolution of investigations. In the past, legal challenges focused on the processes and science related to testing and evaluating evidence. Many of the issues relating to forensics have been resolved and are widely accepted by the courts. Now, greater attention is being placed on the process of collecting evidence and maintenance of the chain of custody. More specifically, close examination is being given to ensure evidence was properly collected, stored, and handled. As part of this process, the security of collected items and identification of persons having contact with each will be questioned to determine if there was any break in security or the evidence may have been contaminated. Because of this, failing to maintain a proper chain of custody will likely result in evidence being determined to be inadmissible.

To address this, officers must be provided the proper supplies and trained how to properly collect and store different types of evidence. Each piece must be properly photographed, labeled, and packaged and an evidence form completed. Once collected and packaged, evidence should be placed in the department's secure temporary storage area before the end of the officer's shift. These storage areas must be accessible for officers 24 hours a day, 365 days a year to protect the chain of custody until the evidence custodian can secure the evidence/property in the evidence room. Storage of items in any other location (i.e. desks, cars, lockers) must be expressly prohibited.

Access to the evidence room must be limited to one evidence custodian and a back-up. The evidence custodian is responsible for all evidence room operations to include ensuring evidence is properly packaged, labeled and stored; transporting evidence to the crime lab; and purging evidence as cases are adjudicated or property owners identified.

Having adequate and properly secured space is a common problem for many departments. Separate, more secure compartments, must be provided for sensitive/high valued items (i.e. money, jewelry), drugs, and weapons. The size of the areas provided for various types of evidence and property is dependent upon the amount of evidence normally collected, speed in which cases are adjudicated, and efficiency of the purging process. The evidence custodian must be trained to properly perform these duties as well as the consequences for failing to perform them accordingly.

A major component for ensuring the integrity of the evidence room's operations as well as the agency's reputation, is for the department to have regular, 'independent' inspections,

inventories, and audits that ensure compliance with accountability standards. Each of these checks have a separate purpose and requirement.

These activities should be done on the following schedule:

Inspections are conducted two times a year to ensure evidence is being stored in a clean/orderly manner and operational procedures are being followed by the evidence custodian. The inspection may or may not be conducted by persons responsible for the property/property and storage areas.

Inventories are done whenever there is a change of the evidence custodian. The person who is assuming the position of evidence custodian and a designee by the chief jointly conduct the inventory. When conducting an inventory, 100% of sensitive or high value property/evidence being maintained must be verified. In addition, a random sampling of 10% of all other property/evidence must be checked. As part of this, staff conducting the inventory should also ensure properly documented and recorded.

Third, an annual **audit** is to be conducted by a supervisor who is **NOT** assigned to or responsible for the evidence room. This is completed by checking a random sampling of all property/evidence, including high risk items, to satisfy the chief that all items have been properly accounted for. The minimum sampling is 10% or 250 items whichever is lower. Any inconsistencies must be identified, corrective actions initiated, and documentation completed.

Finally, the custodian must be continuously vigilant to monitor the status of each item under their control and release or purge each as soon as it is appropriate. In some cases, the owner of the property can be located and returned missing or stolen items. Other cases, particularly evidence, require a court order from the appropriate court authorizing the destruction of the property. Failure to remain current on the release process can cause the designated space to be filled and overwhelming to manage.

When dealing with firearms taken into an agency's custody, officials must ensure proper procedures are taken for their release or destruction. In the event the firearm is linked to some criminal proceedings, the weapon is to be returned to the rightful owner¹ after the proceedings are complete. If the rightful owner is not identified, State law requires all other unclaimed firearms must be handled in one of two ways.²

¹ OCGA 40-5-52 Disposition of Weapons Used in Commission of Crime or Delinquent Act Involving Procession; Civil Forfeiture.

² OCGA 17-5-54 Definitions; Dispositions of Personal Property in Custody of Law Enforcement Agency.

Firearms certified as being unsafe because of wear, damage, age or modifications, OR Federal and/or State law prohibit their sell and distribution, the weapon may be transferred to a City/County or GBI Forensic Laboratory for training or experimental purpose or it must be destroyed.

All other unclaimed firearms must be sold through a bid process to persons holding a federal firearm license (FFL).³ It is important to note Federal law prohibits the sale of firearms with defaced serial numbers or that have been illegally modified (sawed off). This includes sales to a FFL holder.⁴

Finally, agencies must maintain specific records on each weapon taken into their custody that include:

- How the firearm came into the agency's custody;
- Description of the firearm;
- All efforts to contact the owner;
- Any case or docket number;
- Dates of publication in any newspaper notices;
- Date the property was sold or destroyed; and
- Records of the proceeds from the sales in to the general fund.

This information must be maintained in accordance with the State of Georgia Records Retention Schedule.

Reference:

Model Policy and Procedure Manual, "Chapter 13, Property and Evidence"

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Statutes:

O.C.G.A. § 17-5-50. Property unlawfully obtained; rights of owner; hearing; admissibility of photographs in lieu of original property; representation of unknown or absent defendants; statements made by defendant or agent at trial

O.C.G.A. § 17-5-51. Civil forfeiture of weapons used in commission of crime, possession of which constitutes crime or delinquent act, or illegal concealment generally

³ 18 U.S.C. 921 Definitions (Firearms)

⁴ 18 USC 922(k)

O.C.G.A. § 17-5-52 Disposition of weapons used in commission of crime or delinquent act involving possession; civil forfeiture

O.C.G.A. § 17-5-52.1. Disposal of forfeited or abandoned firearms; innocent owners; auctions; record keeping; liability of government entities

O.C.G.A. § 17-5-53. Disposition of devices with historical or instructional value

O.C.G.A. § 17-5-54. Definitions; disposition of personal property in custody of law enforcement agency

O.C.G.A. § 17-5-55. Designation of custodian for introduced evidence; evidence log; storage, maintenance, and disposal of evidence.

O.C.G.A. § 17-5-56. Maintenance of physical evidence containing biological material

O.C.G.A. § 17-5-71 Preservation of Evidence (Sexual Assaults)

Chapter 3: Vehicle Operations

Areas of Concern

Driver Training

- Training is the critical link between policy and officers' performance. When properly done officers function as directed by the department's policies.
- Policy should address the types and frequency of training required for officers.
- Determination must be made when new employees are required to complete the training. Otherwise, they may work for three years before attending the class.

Seat Belts

- State law requires use of seatbelts

Response to Calls for Service

- Policy and training should, identify the type of calls officers are authorized to operate as an emergency vehicle. Supervisors should take the appropriate action to review and document officers' performance to ensure compliance with these standards.
- State law does not recognize a patrol vehicle as an emergency vehicle unless emergency lights and sirens are both activated.
- Even when operating as an emergency vehicle with lights and siren activated, officers must exercise 'due regard' for the safety of other vehicles.

Vehicle Pursuits

- Pursuits are an extremely dangerous activity that can result in the serious injury or death of the driver/passengers of the car being pursued, officer(s) and passengers engaged in the pursuit, or innocent third parties.
- All persons participating in the pursuit should be properly trained, understand the standards of performance, and act accordingly.
- Policy must clearly identify the circumstances when it is acceptable for officers to pursue a vehicle as well as when they should terminate a pursuit.
- Some agencies do not have two cars operating on same shift. If they are engaged in a pursuit with another agency, they must follow the secondary vehicle policy of the department or the interagency agreement.
- The department must coordinate with the agency providing dispatch services to coordinate the operational policies.
- The interruption of or forcible end of a pursuit must be viewed as a use of force.
- After a pursuit is completed, it is critical for the agency to conduct a comprehensive after-action review of all parties involved in any part of the pursuit to determine activities performed well and needing improvement.

- The directives require an annual review of vehicle pursuits officers were involved in during the year.

Transporting Detainees

- The primary concern for these policies surrounds the safe and secure transport of detainees.
- The department should regulate who is authorized to ride in a department vehicle as well as other persons who may be transported other than detainees;
- Searching of a transport vehicle is critical for ensuring the vehicle has no weapons that could be used to harm the officer(s), detainee(s), or facilitate an escape.
- Evidence or contraband from a previous arrest/transport could also be concealed in the vehicle. Following this schedule for searching vehicles will ensure any items left by a person previously transported can be confidently linked to the individual.
- Policy should address the issues of transporting juveniles with adults, females and males simultaneously, and officers transporting persons of a different gender.
- Every detainee should be appropriately searched each time they come into an officer's custody to detect and seize any weapons, contraband, or evidence that could be concealed, destroyed or used. The appropriateness of the search (frisk, strip, body cavity) should be outlined in the policy.
- Officers have a duty to provide sick or injured detainees the appropriate first aid and access to medical treatment.
- Multiple considerations must be addressed when transporting a handicapped detainee including the vehicle used, room for their equipment (crutches, wheel chair), and ability to access or exit the vehicle.
- Detainees should be properly handcuffed and placed behind a safety barrier that ensures the detainee is not able to interfere with the officer as they are driving. At the same time, restraints must be applied in a manner as to not interfere with circulation of blood to the hands and/or feet.
- Guidelines should establish when it is appropriate to stop and/or divert from the normal routes to reduce the potential for assault or escape as well as allegations of mistreatment or assault.

Investigations of Accidents Involving Department Vehicles

- Having an investigation by an independent law enforcement organization is to prevent allegations of a 'cover up'.
- The department may conduct an independent 'administrative' investigation to determine compliance with policy directives.
- Each accident regardless of the seriousness or amount of damage should be reviewed by the officer and their supervisor(s) to determine its cause, evolving patterns with the driver, and steps to prevent similar incidents.
- If an officer is determined to be "at-fault" the appropriate level of corrective action should be taken and documented.

Chapter 3: Vehicle Operations

Discussion

Automobile accidents are the primary cause for serious injury and death of police officers. The State of Georgia has some of the highest number of line of duty deaths resulting from automobile crashes in the United States. In addition, these accidents are a primary cause for property damage and workers' compensation claims to insurance companies representing Georgia agencies. To successfully address this issue, the governing authority and department leaders must provide the necessary support to implement strategies to avoid these incidents. Leaders must also have the long-term commitment to maintain these processes until they become ingrained in the organization's culture and operations.

The first step for accomplishing this is to provide policies that specifically identify expected and prohibited behaviors of employees operating a department vehicle. Once these policies are in place, it is critical that training is provided to reinforce the operational directives and supervisors ensure compliance.

Training

The best training programs include a diverse approach that builds awareness, skill development, and judgment. To accomplish this a variety of training techniques should be utilized including: basic, roll-call, regular in-service training, and advanced training. During basic training recruits are required to successfully complete the Emergency Vehicle Operations Course (EVOC) prior to graduation. This training is designed to build officers' skills when responding to emergency calls. Roll-call training should be used as a refresher or update on legal changes or a recent event. In-service training can employ a variety of techniques including classroom training and simulators. Classroom training using the National Safety Council's Defensive Driving Course or similar classes are designed to increase awareness of basic driver safety techniques. At the same time, simulators provide students a safe environment to develop their decision-making skills while operating a vehicle in realistic and stressful circumstances. Departments should employ each of these approaches within the proscribed periods using certified instructors.

Use of Seatbelts

The use of seatbelts and shoulder restraint devices are critical for reducing the severity of injuries and death of persons involved in an automobile collision. All persons operating or riding in a department-owned vehicle (including detainees) should be required to wear their restraint devices.

Distracted Driving

Police officers are susceptible to distracted driving just as any other driver. The problem is compounded for officers by the need to be observant of their surroundings and the behaviors of

others, constantly monitor radio transmissions, access computer information, as well as operate other equipment (i.e. lights/sirens, speed detection devices, tag readers). This requires the department to reduce these distractions and put processes in place to restrict behaviors and use of equipment that may interfere with officers to focus on safely operating the motor vehicle.

Emergency Response

When officers are dispatched to a call for service, department policy must provide clear and unambiguous guidance if an emergency response is authorized. Officers responding to emergencies are permitted special exceptions to traffic laws, provided the vehicle's emergency lights and siren are activated. Despite these exceptions, officers must still provide due regard to the safety of others and not endanger life or property⁵.

Pursuits

Under the best of circumstances, automobile pursuits are an extremely dangerous activity. This danger is not isolated to the officers engaged in the pursuit, but include the person(s) being chased, as well as innocent bystanders.

Department leaders must implement a comprehensive policy governing officers' decision to engage and remain in a vehicular pursuit.

Typically, agencies follow one of three approaches when developing policy guidelines for pursuits:

1. No pursuit policy. While this approach prevents officers from engaging in a pursuit, consideration should be given to the potential an officer may intentionally violate policy to pursue a person who commits a violent offense (i.e. armed robbery, murder, or officer involved shooting suspect). In addition, guidance needs to be provided for what assistance officers can provide officers engaged in a pursuit from other agencies entering the department's jurisdiction. For example, they assist with blocking intersections to limit the potential for drivers pulling in front of speeding vehicles. Or in the cases of agencies near busy highways and interstates, blocking exit ramps to preventing the driver from exiting into the community.
2. Restrictive policy. Under these circumstances, the department outlines specific conditions in which an officer may engage or continue in a pursuit. For example, pursuits are only allowed for forcible felonies.
3. Permissive approach. This policy provides broad guidelines for officers to use their discretion when entering the pursuit. Some of the factors to be utilized is the type of offense(s) committed, time of day, vehicle/pedestrian traffic, weather conditions, officer's training/skills, etc...

⁵ § 40-6-6 Authorized Emergency Vehicles

The conditions of each community are unique, and each department must determine what is the appropriate approach to regulating vehicle pursuits in their community. The Risk Reduction Certificate policy directives dictate the areas that must be addressed in the policy. It is extremely important to note the decision to forcibly end a chase by ramming, roadblocks, or Precision Intervention Technique (PIT) is considered a use of force. The decision to utilize any of these actions must be based upon the 4th Amendment's Reasonableness Standard. (See U. S. Supreme Court Rulings *Graham v. Connor*⁶ and *Scott v. Harris*⁷)

After a pursuit is complete, officers should complete a comprehensive report. It should include mobile/body camera video from each officer involved in the pursuit, as well as copies of the radio transmissions.

Using this information, a comprehensive after-action review should be completed. The purpose of this review is to document and evaluate the decisions to engage and remain in the pursuit, actions taken during the pursuit, policy compliance, 'near misses' of accidents or other incidents, communications, equipment use/needs/failures, areas performed well, areas needing improvement, and any adjustments needed with the policy. During this review, it is important to include other officers who may not have been involved in the pursuit but were attempting to assist and determine the appropriateness of their actions.

Authorized Passengers

The department is responsible for the safety of all persons who may ride in a department vehicle with an officer. Because of this, the agency should provide clear guidance of who is permitted to ride in a car and steps that should be taken to ensure their safety. Some of the situations to consider include witnesses, victims, citizen ride-along, potential candidates for employment, interns, family members, and news media. If persons are authorized, some consideration should be given to have them review and sign a liability waiver that requires supervisory approval.

Transports

Transporting detainees is a common practice for officers. Because of the frequency of the task, it is easy for officers to become complacent and not follow proper safety procedures. It is not uncommon for officers to find weapons and contraband in their cars after completing a transport. In other instances, suspects have come out of their restraint devices, attacked officers, and attempted escapes. To avoid this, standard operating procedures must clearly regulate transports. Supervisors should regularly review the policy with officers during roll-call and in-service training.

Policy should require officers search their vehicle at the beginning of each shift as well as after every person is transported. The purpose of these searches is to ensure no weapons, contraband

⁶ *Graham v. Connor*, 490 U.S. 386 (1989)

⁷ *Scott v. Harris*, 550 U.S. 372 (2007)

or evidence are concealed in the car. In addition, the officers should also ensure the vehicle is operational (i.e. tires, lights, radio, siren) and assigned equipment (i.e. spare tire, jack, emergency supplies) is functioning properly. Supervisors should observe officers to ensure compliance with these procedures. When inconsistencies are noted, it is incumbent on the supervisor to correct the officer and make the appropriate documentation of the behavior observed and actions taken.

Prior to any transport, the officer should handcuff and complete the appropriate search of a detainee prior to placing them in the vehicle. Once seated, it is incumbent on the officer to secure the individual with the vehicle's safety restraint devices (e.g. seat belt, shoulder harness) to prevent them from being seriously hurt if the officer suddenly brakes or is involved in a collision.

Occasionally, officers may be required to transport handicapped individuals. When this occurs, they must take the necessary accommodations to ensure they can be safely placed and secured in the vehicle being used. Also, arrangements must also be used to transport canes, walkers, or wheel chairs.

In the event an injured person needs to be taken into custody, a decision must be made if emergency medical attention is required. If so, the officer must call for an ambulance and provide first aid until their arrival. Second, if the person's condition worsens during the transport in the car, the officer may not observe the change. In addition, they cannot provide the requisite care and operate the patrol car. Finally, detention facilities will not accept an inmate who they do not have the facilities to treat and require the individual to receive a clearance prior to admission. It should be noted that once a person is brought into custody, the agency is responsible for their medical expenses.

Procedures should also provide guidance for officers transporting persons who are a different gender from the officer. This includes calling in and dispatch documenting times and vehicle mileage at the beginning and end of the transport. In the event the transport is delayed, or a detour is required (i.e. railroad crossing blocked, unexpected traffic congestion) this information should be communicated to the dispatch center. In some cases, it may be beneficial for officers to activate the in-car and/or body camera(s) to capture conversations, comments, or behaviors during the transport.

If possible, women detainees should be placed in a separate vehicle from male detainees. If this is not possible, they should be placed where male detainees cannot have physical contact with them. Juveniles should always be kept separate (sight and sound) from adult arrestees.

Finally, state law provides officers authority to transport prisoners across county lines. As part of this statute, with approval of its governing authority, municipal agencies are authorized to enter into an agreement with the sheriff, to transport prisoners from the location of their arrest to the county where the warrant was issued. If there is no written contract between the sheriff and the other agency head, the sheriff retains the right of first refusal to transport the person.

All responsibility arising from the transport of an arrested individual is statutorily placed on the transporting agency.⁸

Department Vehicle Accident Investigations

Whenever an officer is involved in a collision in a department vehicle, the policy should require the officer immediately secure the scene, report the accident, provide treatment to the injured, request a supervisor respond and call for an officer from the designated independent law enforcement agency (i.e. Georgia State Patrol, sheriff's office, neighboring agency) to conduct an investigation.

The officer's supervisor should conduct an 'administrative' investigation to determine if there were any policy violations. Having an independent investigation of the accident is critical for several reasons. First, having another department conduct the investigation reduces the potential allegations of falsifying records, overlooking evidence, or 'cover up' of poor performance. Second, in the event of legal claims, having another department conduct the investigation provides the legal advisors greater latitude when addressing the claim.

Once the investigation is complete, a comprehensive after-action review should be conducted. This review should consider findings from the investigative report, photographs of the accident scene, in-car camera and/or body-worn camera video, drivers' and witnesses' statements, and other physical evidence. In the end, findings should be provided for:

- actions leading up to the collision,
- proximate cause of the event,
- steps the driver could have taken to avoid the collision,
- whether the officer was at-fault,
- steps to mitigate similar incidents, and
- corrective action needed for the officer.

Reference(s):

Model Policy and Procedure Manual, "Chapter 12: Vehicle Operations"

<https://gachiefs.com/index.php/sample-policy-manual/>

Georgia Public Safety Training Center: On-line Training

Due Regard (1 hour)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC1376>

⁸ O. C. G. A. § 17-4-25.1 Transport of Arrested Person to Jurisdiction in which Offense Committed; Transport of Prisoner Outside County or Municipality

Pursuit Policy Development (2 hours)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC1385>

Statute(s):

O.C.G.A. § 17-4-25.1 Transport of Arrested Person to Jurisdiction in which Offense Committed; Transport of Prisoner Outside County or Municipality

O.C.G.A. § 35-1-14. Written Policies for Emergency Pursuits

O.C.G.A. § 35-1-15. Fresh Pursuit by Law Enforcement Officers; Authority and Responsibilities of Officers; Applicability

O.C.G.A. § 35-10-11 Name Required on Vehicles Used to Enforce Traffic Laws

O.C.G.A. § 40-1-7. Blue Light Required for Officers Enforcing Traffic; exception

O.C.G.A. § 40-6-6. Authorized Emergency Vehicles

O.C.G.A. § 40-8-90. Restrictions on Use of Blue Lights on Vehicles

O.C.G.A. § 40-8-91. Marking and Equipment of Law Enforcement Vehicles; Motorist Allowed to Continue to Safe Location Before Stopping for Law Enforcement Officer Vehicles

O.C.G.A. § 40-8-92 Designation of Emergency Vehicles; Flashing or Revolving Lights; Permits; Fee;

O.C.G.A. § 40-8-94. Sirens, Whistles, or Bells

O.C.G.A. § 50-18-96. Retention of Video Recordings from Law Enforcement Sources; Destruction; Presumption From Destruction; Fee for Duplication

Chapter 4: Search and Seizure

Areas of Concern

- Every officer must be provided regular training on search and seizure procedures as well as evidence collection procedures.
- Supervisors must take an active role in reviewing and evaluating officers when they are involved in search and seizure processes as well as conducting critical reviews of officer's reports. These reports must include a solid, articulate justification for their actions as well as record the techniques used to collect evidence, findings of their search, and storage of evidence.
- Supervisors should review all search warrant affidavits prior to submission to the court.
- Supervisors must review all search warrants prior to officers attempting to serve a search warrant.
- Officers should provide an operations plan when executing a search warrant that outlines each officers' assignments. All officers participating in the search should attend a briefing prior to the search in which the place and persons to be searched are identified, intelligence information regarding the location/persons, assignments, equipment checks, evidence collection procedures, and all other tasks to be completed.
- Inventory searches are for the protection of the officers and agency. They should never be used as guise to conduct a search for evidence or contraband.
- The use of stop and frisks are a valuable tool for officers to protect themselves and prevent an imminent crime. In recent years, the aggressive approaches used by some communities have been effectively employed but come under close scrutiny by the media and civil rights advocates. Because of this, it is important for officers to be able to justify and record their decisions to conduct a frisk as authorized by the courts.
- Officers must be aware of the exigent circumstances that permit them to take immediate action for the public safety and avoid unnecessary waiting to prepare a search warrant affidavit and request the search warrant.

Legal issues related to search and seizure are constantly evolving and increasingly complex area for law enforcement officers to stay fully abreast. The number of court rulings being issued continue to increase. Agency leaders must ensure officers are provided and understand the evolving standards of conduct. This understanding must be sufficient to enable the officers to make quick, sound, operational decisions during uncertain and rapidly evolving situations. To accomplish this, it is not enough for officers to understand the legal standards for search and seizure but must also be observant and attentive to details during these events. Finally, officers must also be able to articulate their observations, reasoning for their decisions, and the actions taken during their investigations.

While training and well-designed policy directives are fundamental for ensuring officers perform at an acceptable standard, it is only through on-going, deliberate practice they will be able to master this critically important function.

The following narrative regarding search and seizure procedures is designed to provide a basic overview for decision-makers as they prepare to implement or modify their operational procedures.

Search with a Warrant

The Fourth Amendment of the U. S. Constitution provides individuals the right to “be secure in their persons, houses, papers, and effects against unreasonable searches and seizures”. To legally search these protected areas, officers are often required to obtain a search warrant.

The standard for obtaining a search warrant is probable cause. To apply for a search warrant, a sworn officer in good standing with POST Council must submit an affidavit to a judicial officer authorized to hold a court of inquiry. All of the information provided in the affidavit must be independently verified by officers prior to presenting it to a judicial officer. This affidavit must

provide sufficient information that would lead a reasonable and prudent person to believe the items that officers are seeking to find will be found at the location being searched. To accomplish this, the affidavit must describe:

- the evidence, contraband, or items officers are seeking to locate;
- the person or place to be searched; and
- why the officer believes the items listed in the search warrant are located in the place or on the person listed in the search warrant.

Once an officer obtains a search warrant, it must be served within ten (10) days from the date of issuance. The warrant may be executed at any 'reasonable time', day or night. A reasonable time is determined in a case-by-case manner and based on the facts and circumstances of that particular case.

When executing a search warrant, officers may use 'necessary and reasonable force' to enter the area described in the search warrant. Prior to entering the premises, officers are to identify themselves as officers and that they have a search warrant to search the premises. If the occupants refuse to acknowledge the officer's notice or if the officers determine there is no one inside, the officer can use reasonable force to enter the premises. In situations where officers are fearful that announcing their presence and the impending search may place the officers' safety in danger or enable occupants to destroy evidence/contraband, they can request a 'no-knock' provision. This request must be justified with reasons for the officer's concerns. The 'no-knock' clause allows officers to immediately make a forcible entry of the premises upon their arrival without announcing their presence. However, as they enter the premises, officers must still identify themselves as officers and they have a search warrant. In addition, officers should be dressed in manner that identifies them as law enforcement officers.

Once the warrant is served, a duplicate copy of the warrant must be left with someone at the location where the instruments, articles or other things were seized. In the event, there is no one present, the copy must be left in a conspicuous place at the premises. In addition, the officer executing the search must provide an inventory of all items seized along with the search warrant return. These documents must be signed under oath by the officer executing warrant.

If the warrant is not served within ten (10) days from the date of issuance, the warrant is voided and must be returned to the court of the judicial officer who issued it.

Crime Scenes

Prior to searching a crime scene, officers must first obtain a search warrant prior to entering the area. However, officers may execute a search without a warrant when:

- There is reasonable belief that there is imminent danger to a person;
- Contraband in plain view may be seized;
- A homicide victim is the sole resident; and
- The scene is a public place.

Searches Without a Warrant

Plain View

Officers may seize evidence, contraband, or fruits of a crime without a warrant when they are observed in plain view. The standard for this seizure is:

- The officer must be legally authorized to be at the location he observed the evidence;
- The item must be in plain view to the officer, and
- The officer is able to immediately recognize the items as evidence, contraband, or fruits of a crime.

Consent Searches

Officers may conduct a consent search at any time, with or without probable cause. The standard for conducting these searches is:

- The person giving the consent must have control over the property that officers are seeking to search;
- The consent must be free and willing; and
- The person giving consent retains the ability to withdraw their consent at any time.

Frisk Searches

In Terry v. Ohio⁹, the Supreme Court ruled that an officer is authorized to stop and frisk an individual whenever the law enforcement officer has a 'reasonable suspicion' the subject has, is, or about to commit a crime. The standard of 'reasonable suspicion' requires the officer be able to articulate the reasons they fear for his or her safety or that a crime is 'afoot'. The scope of a Terry frisk is limited to the individual's outer clothes. If, during the frisk or 'pat down', the officer locates an item they can identify as weapon or contraband (known as the plain feel), the officer can enter the pockets or concealed area to retrieve it. Any contraband discovered in such searches is subject to seizure and admissible into evidence. However, if the search goes beyond what is necessary to determine if the suspect is armed, the search is not valid, and its fruits will likely be suppressed (Minnesota v. Dickerson).¹⁰ In this case, the officer felt the lump in the suspect's pocket, but never thought it was a weapon. "Rather, he determined that it was contraband only after he squeezed, slid, and otherwise manipulated the pockets contents."

Search Incident to Arrest

The standard for conducting a search incident to arrest is a legal arrest of the individual to be searched. The search must be conducted at the time of the arrest and is limited to the person

⁹ Terry v. Ohio, 392 U.S. 1 (1968)

¹⁰ Minnesota v. Dickerson, 508 U.S. 366 (1993)

and the area 'within his immediate control'. A search incident to arrest is more intrusive than a frisk. Officers are allowed to search the arrestee's pockets and removal of shoes. The officer can also search the areas within the arrestee's reach. This area is typically described as the 'wing-span' of the arrested person's reach. In some cases, an officer may also search the passenger compartment of a vehicle the individual was occupying (see vehicle searches below).

Vehicle Searches

The mobility of motor vehicles often constitutes an exigent circumstance that authorizes officers to conduct a warrantless search. The "automobile exception" to the search warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. (Gondor v. State)¹¹. To conduct a warrantless search of a vehicle, the police officer must have 'probable cause' to believe the vehicle contains items that may be seized. The reasoning for this probable cause, at the time of the search, should be documented in a report regardless of whether evidence was located, or charges filed.

The 'plain odor' doctrine justifies officers who smell marijuana emanating from the vehicle or container within the vehicle to conduct a warrantless search of the car or any container within the vehicle (United States v. Haley)¹².

If probable cause and exigent circumstances existed originally, the police may search the vehicle after towing it to the impound lot without securing a search warrant U.S. v. Johns¹³. However, the Court warned this was not an authorization to hold a vehicle indefinitely. If an officer has probable cause to believe there is contraband or evidence located in a car, the 'automobile exception' applies to the entire car and any containers within the vehicle California v. Acevedo,¹⁴.

When making a stop for a traffic offense, officers are authorized to conduct driver's license, vehicle registration, and outstanding warrant checks as they complete the citations. Beyond the time required to complete these tasks, any extension of the stop without probable cause of a criminal offense is considered unconstitutional. In this case, the officer completed the traffic stop related activities and asked for permission to have his K-9 sniff around the car. The court ruled having the persons to wait while the dogs conducted the search was not permitted¹⁵.

If a person is arrested after a vehicle stop, the passenger compartment of the vehicle may be searched incident to the arrest if the circumstances of the custodial arrest fall within the guidelines outlined in Arizona v. Gant.¹⁶ Police may search a vehicle incident to a recent

¹¹ Gondor v. State, 129 GA. App.665 (1973)

¹² United States v. Haley, 669 F.2d 201, 203-204, and n. 3, cert. denied, 457 U.S. 1117 (1982)

¹³ United States v. Johns, 469 U. S. 478 (1985)

¹⁴ California v. Acevedo, 500 U. S. 565 (1991)

¹⁵ Rodriguez v. United States, 135 S. Ct. 1609 (2015)

¹⁶ Arizona v. Gant, 556 U.S. 332 (2009).

occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search OR it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Finally, a vehicle located on the curtilage of a property (areas surrounding a residence), the automobile exception does not apply. As with searches of homes, buildings or other structures, a vehicle located on the curtilage, must be searched pursuant to a search warrant.¹⁷

Vehicle Inventory

Officers are permitted to conduct an inventory of a vehicle when it is impounded. The purpose of an inventory is not to search for contraband. However, if any contraband or evidence is located during a legal inventory, it is admissible as evidence. In South Dakota v. Opperman¹⁸, the U. S. Supreme court noted three justifications for allowing a vehicle to be inventoried by an officer without a warrant.

1. The need for law enforcement to protect the owner's property while it remains in police custody;
2. The inventory protects the officers against claims of lost or stolen property; and
3. It is necessary to protect the officers against potential dangers that may be located in the vehicle.

To conduct a legal inventory two factors must be satisfied. First, the inventory must be done pursuant to the department's standard operating procedure. Second, the vehicle must be legally impounded. For example, the driver is arrested and there is no one else available to release the vehicle. The driver could authorize its release to another occupant who could safely and legally operate the vehicle. The driver could also choose to leave the vehicle at its current location (i.e. shopping center parking lot).

Exigent Circumstances

The courts recognize there are situations in which speed is essential and time does not permit for an officer to obtain a search warrant. When these situations occur, officers are authorized to take immediate action without a warrant.

Hot Pursuit. In United States v. Santana¹⁹, the Supreme Court ruled officers may forcibly enter

¹⁷ Collins v. Virginia, 584 U. S. ____ (2018)

¹⁸ South Dakota v. Opperman 428 U. S. 364 (1976)

¹⁹ United States v. Santana 427 U. S. 38 (1976)

an offender's home they are pursuing without a warrant. To justify this entry officers must satisfy the following standards:

- The arrest has begun.
- Offender knows he is being placed under arrest
- The offender is taking action to avoid the arrest.

Public Safety is Endangered. Some emergencies require an officer to take immediate action. For example, screams from within a house or an incident where persons are in immediate danger of being hurt. During these exigent circumstances, an officer may make an emergency search of the persons or premises. Some of the factors officers may consider when making these decisions include the gravity of the offense, persons being hurt, presence of weapons, and the likelihood of an escape.

Reference(s):

Model Policy and Procedure Manual, "Chapter 9 Search and Seizure"

<https://gachiefs.com/index.php/sample-policy-manual/>

Georgia Public Safety Training Center: On-line Training

Evidence Collection & Preservation (1 Hour)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC0762>

Searching Motor Vehicles (1 Hour)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC1553>

Statute(s):

O.C.G.A. § 17-5-1. Search pursuant to lawful arrest authorized

O.C.G.A. § 17-5-2. Inventory of items seized without search warrant to be given to person arrested and judicial officer before whom person arrested taken; return of items

O.C.G.A. §17-5-21 Grounds for issuance of search warrant; scope of search pursuant to search warrant; issuance by retired judge or judge emeritus

O.C.G.A. § 17-5-23 Command of search warrant

O.C.G.A. § 17-5-24 Officers authorized to execute search warrants

O.C.G.A. § 17-5-25 Execution of search warrant generally

O.C.G.A. § 17-5-26 When search warrant may be executed

O.C.G.A. § 17-5-27 Use of force in execution of search warrant

O.C.G.A. § 17-5-28 Detention and search of persons on premises

O.C.G.A. § 17-5-29 Written return of items seized; filing and signing of inventory; delivery of copies of inventory

Chapter 5: Use of Force/Response to Aggression

Areas of Concern

- Agencies must use the 'objectively reasonable' standard established in the U. S. Supreme Court decision of *Graham v. Conner* (1989) when evaluating an officer's use of force.
- Policy should be clear, unambiguous, and comprehensive to ensure officers understand when less lethal/lethal force is appropriate.
- Training must be provided annually, and detailed records must be maintained.
- Officers must be trained for every less lethal and lethal device authorized to carry.
- Thorough and detailed reporting of incidents must be completed after EVERY use of force or response to aggression.
- Every supervisor in the officer's chain of command should review the use of force/response to aggression report.
- An outside agency must be utilized to investigate all use of deadly force incidents. This investigation is to determine if there were any criminal violations. In addition, the agency must complete an internal investigation to determine if there were any policy violations. These two investigations must be conducted separately.
- Investigators must have a functioning understanding of the Garrity Warnings and trained in how to conduct internal investigations.

Chapter 5: Use of Force/Response to Aggression

Discussion

Incidents resulting in law enforcement officers' use of force, particularly deadly force, are extremely rare when compared to the number of police encounters with the public.²⁰ Despite this, many in the public believe these incidents are very common. This inaccurate perception, together with the inherent danger and potential litigation associated with an officer's use of force, require agencies take a proactive stance to manage these incidents. To accomplish this, police leaders must work to ensure department policy, training, and review of an officer's use of force comply with established legal and professional standards.

Legal Standards

Georgia law provides peace officers:

“may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm.”²¹

State law also prohibits law enforcement agencies or governing authorities from adopting or promulgating ‘any rule, regulation, or policy which prohibits a peace officer from using that degree of force to apprehend a suspected by the statutory and case law of this state.’²²

The U. S. Supreme Court's ruling in *Graham v. Conner* (1989) established the standard for evaluating all claims of excessive force by law enforcement officers “in the course of an arrest, investigatory stop, or other ‘seizure’” as the Fourth Amendment's reasonableness standard²³. The Court wisely observed that officers have to make split-second decisions in ‘tense, uncertain,

²⁰ Emerging Use of Force Issues: Balancing Public and Officer Safety, International Association of Chiefs of Police (IACP), March 2012, p. 11.

²¹ OCGA 17-4-20 (b), Authorization of Arrests with and Without Warrants Generally; Use of Deadly Force: Adoption or Promulgation of Conflicting Regulations, Policies, Ordinances, and Resolutions; Authority of Nuclear Power Facility Security Officer.

²² OCGA 17-4-20 (d), Authorization of Arrests with and Without Warrants Generally; Use of Deadly Force: Adoption or Promulgation of Conflicting Regulations, Policies, Ordinances, and Resolutions; Authority of Nuclear Power Facility Security Officer.

²³ *Graham* at 395

and rapidly evolving situations'.²⁴ The Court went on to explain an officer's actions, regardless of their underlying intent or motivation, must be evaluated from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight.²⁵ When determining the reasonableness of an actions, the facts and circumstances of the incident must be evaluated using four factors:

- Severity of the Crime at Issue;
- Whether the Suspect Posed an Immediate Threat to the Safety of the Officers or Others;
- Was the Suspect Actively Resisting Arrest; or
- Was the Suspect Attempting to Evade Arrest by Flight;²⁶

Policy

In order to implement the standards established by the legislature and the courts, each department must establish a policy governing officers' use of force. The purpose of this policy is to give clear, unambiguous, and comprehensive expectations for officers. The policy should address when less-lethal and lethal force is appropriate, outline approved/prohibited techniques, list authorized weapons/ammunition, and describe the reporting and review procedures. The directives should also require that every officer be trained and carry at least one 'intermediate', less-lethal weapon. The department's operational procedures should also require an officer to intervene whenever they observe another officer using inappropriate or unlawful force. In addition, officers should be required to immediately report the behavior to the supervisor.

Training

The process required to operationalize department policy into practice is training. To ensure officers are capable of effectively performing their job, agencies must ensure their staff fully understand the established standards for responding to aggression, possess the decision-making skills to apply these standards, as well as effectively employing lethal and less-lethal force techniques. The Georgia Peace Officer Standards and Training Council (POST) annual minimum standards requires every officer to satisfactorily complete Firearms Requalification, Use of Deadly Force, and De-Escalation training annually.²⁷ But every physical technique such as defensive tactics or firing a weapon is a diminishing skill set. When individuals do not frequently train on a skill set, their abilities diminish. Compounding the issue are findings that officer-involved shootings are more likely to occur in low-light conditions.²⁸ To respond to these

²⁴ Graham at 397

²⁵ Graham at 396

²⁶ Graham at 396

²⁷ Rules of Georgia Peace Officer Standards and Training Council, Chapter 464-5 Training, <https://www.gapost.org/Rules/5Trng.html>

²⁸ Aveni, Thomas J., Officer-Involved Shootings: What We Didn't Know Has Hurt US, The Police Policy Studies Council, 2003 http://www.theppsc.org/Staff_Views/Aveni/OIS.pdf

situations, officers must train in conditions similar to those they are likely to experience. Because of this, it is important officers do more than simply complete their basic qualification course and include these alternative conditions.

Finally, all training must be conducted by a POST certified instructor and detailed records maintained of the lesson plans, instructor qualifications, training conditions, testing/qualification scores.

Reporting

Whenever an officer uses any type of force, a report should be completed to memorialize the event in detail. Many agencies have changed the reporting terminology from a 'use of force' report to a 'response to aggression' report. This change recognizes an officer's decision to use some type of force is not a random, isolated act, but a response to the aggressive behavior by another individual and more accurately places the responsibility for an officer's actions on the suspect.

A response to aggression report is a separate document from the incident report. Its narrative should include the reason for the officer's presence at the scene, a detailed description of his observations, actions by the aggressor, and the officer's responses to those actions. Oftentimes, officers tend to place as little information as possible into a report or use 'cookie cutter' formats. For example:

At the above date and time, I (officer's name) responded to the above location, where I observed the suspect (suspect's name). When he failed to follow my commands, I used the least amount of force necessary to subdue the suspect.

This approach does not provide the reader with a vivid description of the threat the officer experienced. In addition, it does not provide the information needed to prosecute the case or for the officer to accurately recall events during subsequent legal hearings.

Along with the written report, the department should also collect any video recordings (i.e. mobile, body cams, CCTV), radio transmissions, and photographs of the officer(s) and suspect(s). The supervisor should also obtain statements from the arrestee and any witnesses at the scene. If they refuse to provide a statement, their name and other biographical information should be collected and included in their report.

Many times, new officers become defensive and express concerns that supervisors do not 'trust' them or take the word of the suspects over the officers. First, the supervisors have a responsibility to the officer, department, and community to ensure every officer is performing in accordance with established legal and department guidelines. Second, every comprehensive and

accurate report an officer composes helps to build a solid defense against false allegations by documenting a pattern and practice of acting in accordance with established standards.

Supervisory Review

Finally, every supervisor in the officer's chain of command should review the response to aggression report and the supporting documentation/evidence to ensure officers are performing in accordance with established standards and the department's policy. These assessments must be based only on the information the officer knew at the time of the incident, not what may have been learned later. As upper level supervisors conduct their reviews, they should also assess the lower ranking supervisor's actions and the quality of their review. If an officer's or supervisor's actions were improper, the appropriate corrective action should be taken and documented in the officer's personnel file. Leaders should avoid taking a stance of inaction. Failure to take corrective action always results in the individual's performance continuing to degenerate and increases the potential for a bad incident occurring.

Finally, the department should conduct an annual assessment of all response to aggression incidents to identify any patterns or trends. This information should be recorded in a formal document and used to determine areas staff are performing well and need to improve.

Response to Deadly Force/Officer-Involved Shootings

When an officer-involved shooting occurs, professional standards require two separate, but parallel investigations be conducted – a criminal investigation by an outside agency and an administrative investigation by department officials. The purpose of having an outside agency to conduct a criminal investigation is to ensure an objective collection of the evidence and assessment of the facts. With a criminal investigation the officer retains their 5th Amendment Right Against Self-Incrimination. However, the administrative investigation is designed to determine if the department's policies were violated and a statement for any officers/employees can be required. Failure to answer the administrative investigator's statements may be grounds for disciplinary action including termination.

Because these two investigations have separate purposes and standards of compliance, it is critical they are conducted separately, by separate investigators, and their results are not intermingled.

The agency's policy should clearly explain the department will conduct two distinct and separate investigations and the purpose of each. It is recommended the policy states that, in the criminal investigation, officers have the Right Against Self-Incrimination, and that they may refuse to make any statements in the criminal investigation whether to the Agency's own investigators, or to the GBI (or other agency conducting the criminal investigation). The policy further should provide that an officer has the right to request the presence of the officer's attorney during any

criminal investigation questioning, and that an officer's choosing to exercise any of these rights will have no impact on their employment.

The policy should also provide that whenever the Agency conducts an internal investigation of the incident its purpose is to determine policy compliance. Because of the implied threat to an officer's employment both for non-compliance with a behavioral policy and for non-cooperation with the administrative investigation, it is critical that this interview be conducted separately from the criminal investigation. The policy should emphasize that any statements the officer makes to department investigators during the administrative investigation cannot be shared with or used by the criminal investigators unless and until the officer chooses to waive his Fifth Amendment Right against Self-Incrimination. Because of this, the administrative investigation interviews ordinarily should not be conducted until the independent criminal investigation interviews have been completed. Please note the importance of not allowing the criminal and administrative investigations to be intermingled. Otherwise, the requirements to participate in the administrative interviews can taint the voluntariness of the statement.

Reference(s):

Model Policy and Procedure Manual, "Chapter 4: Training",
<https://gachiefs.com/index.php/sample-policy-manual/>

Model Policy and Procedure Manual, "Chapter 10: Firearms",
<https://gachiefs.com/index.php/sample-policy-manual/>

Model Policy and Procedure Manual, "Chapter 11: Use of Force",
<https://gachiefs.com/index.php/sample-policy-manual/>

**Georgia Public Safety Training Center
On-Line Training Courses**

Law Enforcement and Animal Encounters (1 hour)
<https://access.gpstc.org/student/classes/details?gpstcCode=MC1753>

Use of Force (3 hours)
<https://access.gpstc.org/student/classes/details?gpstcCode=MC2067>

Use of Force and De-Escalation Options for Gaining Compliance (5 hours)
<https://access.gpstc.org/student/classes/details?gpstcCode=MC1882>

Chapter 6: Arrest

Areas of Concern

- All arrests must be based upon probable cause.
- Officer must be POST certified and in good standing.
- Persons arrested with a warrant must be carried before a judicial officer within 72 hours.
- Persons arrested without a warrant must be carried before a judicial officer within 48 hours.
- Legislators, members of the military, and some foreign nationals have immunity from arrest in certain circumstances.
- The arresting officer in domestic violence cases cannot have any prior or current familial relationship with the victim or offender.
- The issue of juvenile arrests has become increasingly more complex, requiring communications with the juvenile officers prior to taking a youth to a Regional Youth Detention Center (RYDC).

Chapter 6: Arrest

Discussion

An individual's freedom to move about without governmental interference is one of the most valued rights provided to individuals under the U. S. Constitution. While officers across the nation routinely arrest individuals for criminal behavior, no other official, not judges, elected officials, or any other governmental employee have the authority seize or take a person into custody. Because of this, a law enforcement officer's authority to seize an individual's freedom is an enormous responsibility that should never be taken lightly.

Failing to act appropriately when exercising the authority to arrest a person is a serious issue that can result in claims of a false arrest. To avoid the negative publicity and costly liability associated with these claims, agencies must have protective measures in place that include a comprehensive up-to-date operational procedure, regular training, supervisor review of officer's performance and arrest reports, and a consistent record of holding individuals accountable for inappropriate behavior.

Arrests can be made in two ways; with an arrest warrant and without an arrest warrant. When serving an arrest warrant, the officers should first ensure it was appropriately signed by a court with the appropriate authority. The individual serving the warrant must be sworn and their certification as a Peace Officer in good standing with the Georgia Peace Officers Standards and Training (POST) Council. Third, the officer must be within their jurisdictional authority at the time of the arrest. Persons arrested with a warrant must be carried before judicial officer within 72 hours of the arrest.

Arrests made without a warrant must be based upon probable cause. Probable cause is generally defined as those facts and circumstances that would lead a reasonable, prudent, person to believe the offender committed the offense for which they are being accused (charged). As with arrests with a warrant the officer must be sworn, in good standing with POST Council, and be within their jurisdictional boundaries when making the arrest. There are a limited number of exceptions in which an officer is permitted to arrest a person without a warrant for an offense that occurred outside their presence. These include:

- the offender is endeavoring to escape;
- the officer has probable cause to believe an act of family violence as defined in O.C.G.A. §19-13-1 has occurred; a violation of a criminal family violence order as defined in O.C.G.A. §16-5-95 (It is important to note state law requires that in these types of incidents, the arresting officer cannot have any prior or current familial relationship with the victim or offender);

- has probable cause to believe that an offense physical abuse has been committed against a vulnerable adult;
- there is likely to be a failure of justice for want of a judicial officer to issue a warrant.

Persons arrested without a warrant must be taken before a judicial officer within 48 hours of the arrest or be released.

Generally, arrests for ordinance violations or traffic offense should only be made if the offense occurred in the officer's presence. However, there are two exceptions. First, when investigating an accident, the officer develops probable cause to determine either driver committed an offense. Second, if the offense was observed by another officer, they can notify a second officer who may issue the citation. When charging the driver, both officer's names are to be placed on the citation and appear in court.

Immunity from Arrest

Certain individuals possess immunity from arrest under special circumstances. State and Federal legislators during session or committee meetings unless there is treason, felony, or breach of the peace. There are some exceptions to these immunities that require closer instruction. For example, a legislator was arrested one evening during the legislative session. The court ruled that coming from dinner and not a committee meeting was not within his immunity.

Military personnel have immunity in all cases, except treason, felony, or breach of the peace, are privileged from arrest during attendance at drills, parades, meetings, encampments, and the elections of officers, going to and returning from performance of any active duty as such members.²⁹

Under U. S. Treaty, foreign government officials with diplomatic or consulate status, and in some cases embassy employees, have special immunity from arrest.³⁰ When officers encounter these individuals, policy should provide for contact information with the U. S. State Department to confirm their status and release procedures.

Foreign Nationals

A foreign national is an individual who is a citizen from another country. In some cases when a foreign national is arrested, it is mandatory to notify an embassy or consulate.³¹ In other cases, the individual is to be provided the opportunity to notify their embassy.

²⁹ O.C.G.A. 17-4-2 Privilege from Arrest of Active Duty Military Personnel

³⁰ The Model Police Operations Manual presents a chart listing the three different levels of status and actions officers are to take when these individuals are encountered.

³¹ The Model Police Operations Manual presents a chart listing the countries that require the embassy to be notified.

Alternatives to Arrest

Every encounter with the public need not result in a citation being issued or an arrest being made. There are many situations in which the use of an alternative to arrest is more appropriate. What is reasonable in terms of police action or what constitutes probable cause varies with each situation. Different factors may justify an investigation, detention, search, arrest or no action at all. This requires officers to consider the totality of the circumstances and exercise judgment as to the most suitable response.

Department policy should provide officers with guidance of when and how alternatives to a physical arrest should be utilized. Some alternatives that are available include verbal/written warnings, release on a citation, or no action at all. In other instances, the officer may need to conduct more investigations, temporarily detain the individual(s), or exercise a custodial arrest.

Juveniles

In recent years, there have been significant changes to the laws regarding juvenile delinquency and how these cases are handled.

Youth committing offenses that are only applicable to persons under the age of 17 are known as 'Children in Need of Services' (CHINS). Until recently, these offenses were known as 'status offenses'. Generally, youth accused of one of these offenses are to have a Juvenile Complaint Form completed and sent to the juvenile officer for review and action.

A delinquent act is when a person under 17 years of age commits an offense that is considered a crime (i.e. shoplifting, criminal trespass, burglary, assault). When an officer takes a child into custody for a delinquent act, he is to immediately notify the juvenile court intake officer to determine if the child is to be released or taken into custody and transferred to a Regional Youth Detention Facility.

The Superior Court has concurrent and original jurisdiction over the trial of any child 13 to 17 years of age who is alleged to have committed one of the following offenses:

- Murder;
- Murder in the second degree;
- Voluntary manslaughter;
- Rape;
- Aggravated sodomy;
- Aggravated child molestation;
- Aggravated sexual battery;
- Armed robbery if committed with a firearm;
- Aggravated assault if committed with a firearm upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-21; or
- Aggravated battery upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-24.

When a juvenile is arrested for any felony, they must be fingerprinted. However, these fingerprints are to be marked in red ink **JUVENILE** and maintained separate from adult fingerprints.

Traffic charges against a child under the age of 17 are to be handled as juvenile traffic offense by the juvenile court. However, the following offenses are considered delinquent acts and are prohibited from being heard as a traffic offense:

- Aggressive driving,
- Reckless driving,
- Speeding offenses punishable by four or more points,
- Homicide by vehicle,
- Manslaughter resulting from the operation of a vehicle,
- Any felony in the commission of which a motor vehicle is used,
- Racing on highways and streets,
- Using a motor vehicle in fleeing or attempting to elude an officer,
- Fraudulent or fictitious use of a driver's license,
- Hit and run or leaving the scene of an accident,
- Driving under the influence of alcohol or drugs, and
- Any offense committed by an unlicensed driver under 16 years of age.

Any person 16 years of age or younger who is arrested or convicted are not to be held in an adult jail or correctional facility. Rather, they must be housed by the Georgia Department of Juvenile Justice. It is also important note that prior to their transport to a juvenile facility youth are to be housed in such a manner that males are separate from females and juveniles do not have any contact by sight or sound with adults.

When the youth is charged for a delinquent act in one county, but they reside in another county, the case is to be transferred to the youth's county of residence. When this occurs, the arresting officer may be required to travel to another county for court proceedings.

Reference(s):

Model Policy and Procedure Manual, "Chapter 8: Arrest".

<https://gachiefs.com/index.php/sample-policy-manual/>

Georgia Public Safety Training Center

On-Line Training Courses

Juvenile Justice Reform

<https://access.gpstc.org/student/classes/public-catalog?f=ONLINE>

Statute(s):

O.C.G.A. § 17-4-1. Actions constituting an arrest

O.C.G.A. § 17-4-2. Privilege from arrest of active duty military personnel

O.C.G.A. § 17-4-3. Right of forcible entry into private dwellings pursuant to execution of arrest warrant

O.C.G.A. § 17-4-20.1. Investigation of family violence; preparation of written report; review of report by defendant arrested for family violence; compilation of statistics

O.C.G.A. § 17-4-21. Duty of arresting officer to take arrested person before judicial officer; right of arrested person to select judicial officer

O.C.G.A. § 17-4-22. Authority of peace officers to make arrests not to be denied because of race, creed, or national origin of peace officers or persons arrested

O.C.G.A. § 17-4-23. Procedure for arrests by citation for motor vehicle violations; issuance of warrants for arrest for failure of persons charged to appear in court; bond

O.C.G.A. § 17-4-24. Duty of law enforcement officers to execute penal warrants; summoning of posse

O.C.G.A. § 17-4-25. Power to make arrests in any county; arrested persons taken before judicial officer; transportation costs; holding in county other than one in which offense committed; transport to regional jail

O.C.G.A. § 17-4-25.1. Transport of arrested person to jurisdiction in which offense committed; transport of prisoner outside county or municipality

O.C.G.A. § 17-4-26. Duty to bring persons arrested before judicial officer within 72 hours; notice to accused of time and place of commitment hearing; effect of failure to notify

O.C.G.A. § 17-4-27. Duty to maintain information about persons arrested by law enforcement officers under their supervision; inspection of records

O.C.G.A. § 17-4-28. Advising, encouraging, or procuring dismissal or settlement of warrant by arresting officer

O.C.G.A. § 17-4-29. Collecting or receiving costs or other charges of prosecutor or defendant by arresting officer before warrant returned

O.C.G.A. § 17-4-30. Arrest of hearing impaired persons

Arrests by Private Citizens

O.C.G.A. § 17-4-61. Grounds for Arrest

O.C.G.A. § 17-4-61. Taking of persons arrested before judicial officer or to peace officer; duty and liability of peace officer taking custody

O.C.G.A. § 17-4-62. Taking of persons arrested before judicial officer within 48 hours of arrest

Chapter 7: Off-Duty and Extra-Duty Employment

Areas of Concern

- State law requires officers working off-duty to receive written approval from the head of the agency (Chief or Sheriff).
- When an officer is working in an extra-duty job and the potential use of their law enforcement powers could be foreseen or expected, it must be located within the agency's jurisdictional boundaries. Otherwise making an arrest is grounds for false arrest.
- Injuries that occur when an officer is acting in a law enforcement capacity can be filed under the department's worker's compensation.
- Documentation should be made of any police related activity, specifically arrests, use of force, or investigations to ensure agency has a record of any actions taken by an officer.
- Excessive off-duty employment could affect officer's ability to perform regular duties as expected.

Chapter 7: Off-Duty/Extra Duty Employment

Discussion

The purpose of this policy is to protect the city, department, and officers from increased liability, potential injuries, and creating a negative image. According to O.C.G.A. § 16-10-3 (c) (1), officers “employed by private persons, firms, or corporations during his off-duty hours” must receive approval “in writing by the chief or head, or his duly designated agent, of the law enforcement agency by which such law enforcement officer is employed.”

Off-duty employment is defined as work entirely separate from the employee’s position with the police department. For example, working as an instructor or working with a landscape business would be examples of when the officer is working in another job, but being a police officer/employee has no bearing on the work.

Extra-duty employment, however, is when the officer’s actual or potential use of their law enforcement powers could be foreseen or expected. For example, the individual is off-duty and not being paid by the department but is working in a position as a security officer.

An officer’s conduct when working an extra-duty job may be grounds for a law suit (i.e. false arrest, excessive use of force, etc.) for the officer and the department. Because of this, authorization to work an extra-duty job should be limited to the agency’s jurisdictional boundaries. Another consideration that will need to be addressed is the report writing requirements for officers who are involved in an incident while working extra-duty jobs. In particular, policy should specify when reports are to be completed (e.g. incident/arrest/use of force reports), time restrictions for completion, and whether there are to be completed during the extra-duty assignment or when they return to work.

Injuries that occur when an officer is acting in a law enforcement capacity while off-duty may also be filed under the department’s worker’s compensation.

Even though an officer may be working in an ‘off-duty’ capacity during an extra-duty job, he is still perceived by the public as an officer. Allowing officers or employees to work at some locations could tarnish the department’s reputation. For example, where drug sales/use, prostitution, disturbances, or other activities are commonplace place the officer in a very compromising situation and usually lead to the department being viewed as permitting or facilitating this behavior. Because of this, the department has a vested interest in limiting the types of jobs an employee works.

Finally, leaders should consider the number of hours officers are permitted to work while off-duty. Permitting employees to work for extended periods can easily affect their ability to function at full capacity when they return to work. Fatigue from working extended hours during their 'off time' increases the likelihood the employee will be less attentive, make serious mistakes, and more prone to accidents during their regular job. Leaders should also be sensitive to employee abuse of sick leave to work extra/off-duty jobs.

Reference(s):

Model Policy and Procedure Manual, "Chapter 5: Code of Conduct".

<https://gachiefs.com/index.php/sample-policy-manual/>

Statute(s):

O.C.G.A. § 16-10-3. Using private funds for law enforcement; off-duty employment of law enforcement officers

Chapter 8: Persons Experiencing Mental Health Issues or Persons with Diminished Capacity

Areas of Concern

- Dealing with persons experiencing a serious mental health condition can be potentially violent. Because of this, officer safety must be a top priority.
- Having a mental health condition or experiencing diminished mental capacity is not a crime. However, their behavior may evolve into a criminal offense.
- Law enforcement officers frequently interact with persons experiencing mental health issues who are in stress or persons experienced diminished capacity. Therefore, it is reasonable to expect officers should anticipate encountering these individuals be trained how to properly engage, de-escalate, and resolve an incident. Because of this it is critical for officers to receive advanced and refresher training on how to properly accomplish this.
- The department should have a policy supporting the use of de-escalation and diversion.
- Supervisors should be dispatched to incident involving persons with mental health issues or diminished capacity to provide supervisory oversight.

Chapter 8: Persons Experiencing Mental Health Issues or Persons with Diminished Capacity

Discussion

Recent studies indicate that approximately 18% of adults in the United States experience a mental illness every year. Four percent of the population has experienced a 'severe' mental illness within the past year that has affected their ability to relate with others or to complete normal daily functions.³²

Law enforcement officials have experienced a similar increase in the numbers of encounters with these individuals. Unfortunately, this has resulted in larger numbers of persons being introduced into the criminal justice system. According to the U. S. Department of Justice, 56% of inmates in state prisons and 64% in local detention facilities have reported having mental health problems.³³

Most persons with a mental health condition (sometimes referred to as mental health consumers) are not violent. Studies indicated that only about 10% of the homicides in the United States are perpetrated by individuals who are severely mentally ill and are not being treated.³⁴

Nevertheless, dealing with persons who are severely mentally ill can be dangerous and must be considered an officer safety issue. Officers have often been required to use physical force to effect an arrest. In some cases, officers have been forced to use deadly force to defend themselves. These dangerous encounters are a threat to the police, mental health consumers and the public. Studies have reported that people with mental illnesses killed law enforcement officers at a rate of 5.5 times greater than the rest of the population. At the same time, people with severe mental illnesses are killed by police in justifiable homicides at a rate nearly four times greater than the general public.³⁵

Recognizing the increased likelihood of officers encountering persons with mental illness or diminished capacity, it is imperative officers receive proper guidance through departmental policy as well as training of how to operationalize these directives.

³² (Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. (February 28, 2014). The NSDUH Report: State Estimates of Adult Mental Illness from 2011 and 2012 National Surveys on Drug Use and Health. Rockville, MD.

³³ James, Doris J. and Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates, Bureau of Justice Special Report, U. S. Department of Justice, Office of Justice Programs, September 2006 (NCJ213600).

³⁴ Matejkowski, JC, Cullen SW, Solomon PL; "Characteristics of persons with severe mental illness who have been incarcerated for murder." Journal of the American Academy of Psychiatry Law, 2008, 36: 74-86.

³⁵ <http://mentalillnesspolicy.org/crimjust/law-enforcement-mental-illness.html>

In 2014, the Georgia Association of Chiefs of Police produced a report entitled [Mental Health Issues in Law Enforcement: Review and Recommendations Concept and Issues White Paper](#). This document identifies the issues related to dealing with persons experiencing a mental health issue, statutory legal authority to take them into custody and transport them to mental health facilities, and services available to assist. Links to access this report are listed in the resource section below.

In addition, recent court cases as well as consent agreements with the U. S. Department of Justice under 42 U.S.C. 14141 have suggested that officers should take into consideration an individual's diminished capacity. To accomplish this, the agency should have a policy directing officers how to interact with persons experiencing diminished capacity. When possible, it is extremely important for officers to exercise de-escalation techniques and calm the situation. Because of this, policy should emphasize the use of de-escalation techniques when possible. Second, the evidence clearly suggests that officers commonly encounter person with mental illness or diminished capacity. Having determined this, officers should be provided training for mental health consumers or persons with diminished capacity. Two of the most commonly attended classes are Mental Health First Aid (8 hours) and Crisis Intervention Training (40 hours). Third, the agency should consider requiring refresher training as part of their annual in-service program every three years.

Finally, State law requires any officer taking a person into custody and delivering a person for examination by a physician to prepare a written report detailing the circumstances under which they were taken into custody. The report and the court order or physician's certificate should be made part of the patient's clinical record.³⁶

Reference(s):

Georgia Association of Chiefs of Police Mental Health Issues in Law Enforcement: Concept and Issues White Paper Review and Recommendations

https://gachiefs.com/wp-content/uploads/2016/05/2014_MentalHealthIssuesLawEnforcementWhitePaper.pdf

Model Policy and Procedure Manual, "Chapter 16: Patrol Functions"

<https://gachiefs.com/index.php/sample-policy-manual/>

Model Policy and Procedure Manual, "Chapter 12: Vehicle Operations"

<https://gachiefs.com/index.php/sample-policy-manual/>

³⁶ OCGA 37-3-41 (Effective June 30, 2018) Emergency Admission Based on Physician's Certification or Court Order; Report by Apprehending Officer; Entry of Treatment Order into Patients Clinical Record: Authority of Other Personnel to Act Under Statute.

Crisis Intervention Training:

<https://www.gpstc.org/training-divisions/crisis-intervention-team-cit-training/>

Georgia Public Safety Training Center: On-line Training

Autism and De-Escalation (1 Hour)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC2063>

Dealing with the Mentally Ill or Persons with Diminished Capacity (1 hour)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC1421>

De-Escalation Options for Gaining Compliance (2 hours)

<https://access.gpstc.org/student/classes/details?gpstcCode=MC2061>

Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD) –
24 Hour Crisis Line: (800-715-4225)

Statute(s):

O.C.G.A. § 37-3-4. Immunity of hospitals, physicians, peace officers, or other private or public hospital employees from liability for actions taken in good faith compliance with admission and discharge provisions of chapter; immunity not applicable to failure to meet standard of care in provision of treatment

O.C.G.A. § 37-3-5. Apprehension by peace officer of patient who leaves facility without permission

O.C.G.A. § 37-3-41. (Effective June 30, 2018. See note.) Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute

O.C.G.A. § 37-3-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.

O.C.G.A. § 37-3-101. Transportation of Patients Generally.

Chapter 9: Multi-Jurisdictional Task Forces

Areas of Concern

Multi-jurisdictional task forces are a cost-effective approach to collaborate and share resources to address a common problem across jurisdictional lines. However, it is critical the agencies participating in the task force anticipate the problems may arise in the organization, staffing, funding, and operating the program. Once these are identified steps:

- Officers authority to exercise the powers of arrest and search must be clarified.
- Lines of Authority
- Selection processes and criteria
- Supervision/disciplinary issues
- Rotational processes for persons assigned
- Specialized training required and responsibility for payment of the associated costs
- Funding formula to identify responsibility for costs to include salaries, purchase of supplies, office space/equipment and operational equipment, capital expenditures such as automobiles
- Formula for the separation of asset forfeitures
- Operational procedures and if the task force does not have a policy in place, the officer is required to following their department's policy/operational procedures.
- Reporting requirements to employee's employing agency
- Processes to resolve conflicts
- If the task force separates, how will equipment and other assets be separated
- Liability coverage for officers. This must be structured to ensure the different governing authorities (i.e. city and counties) are not held responsible for another jurisdiction's officers conduct.

Chapter 9: Multi-Jurisdictional Task Forces

Narrative

Over the years, many law enforcement agencies have pooled their resources with the use of task forces to effectively address criminal activity that crosses jurisdictional boundaries. These collaborations provide many advantages for participants by allowing agencies to share expertise, staff, intelligence information and equipment as well as avoid the costly duplication of services. These groups have used a variety of approaches to address issues of authority, organizational structure, funding, and oversight.

For a task force to be successful, each sponsoring agency must perceive they are a respected and equal partner in the collaboration. To accomplish this, there must be consistent focus on mission and purpose of the group, open and candid communication, and a perception each agency is an equal partner in the program.

In recent years, lawsuits involving officers assigned to task forces have resulted in large claims for insurance companies. To mitigate these claims, a variety of issues must be addressed through a Memorandum of Understanding (MOU). This agreement should identify the lead agency, governing board assignment and authority, reporting requirements, funding formulas, processes for resolving conflicts, and separation of equipment, assets, and personnel when the task force is dissolved.

The agreement should also have a statement that articulates the purpose of the task force as well as the source of each officer's authority. It is extremely important that the MOU should specify how liability insurance coverage is provided. This may be accomplished in several ways. The first approach is for each agency to be responsible for providing coverage of officers assigned to the task force. This statement should also clarify their governing authority and insurance coverage is not responsible for the actions of any agent from another jurisdiction. The second approach is for the host agency to provide the insurance coverage of each officer. Failure to do this could result in a governing authority's insurance carrier being held responsible for claims against an officer assigned to the task force who is not their employee.

The task force must have up-to-date procedures that address minimum employment standards, organizational structure, selection processes, supervisory authority, rotation of assignment to the unit, rules of conduct, disciplinary procedures, operational procedures, training requirements, reporting requirements, and other actions required of a law enforcement agency. In cases when the task force does not have operational procedures, each officer should follow their sponsoring agency's directives.