

February 2012

The Local Government LIABILITY BEAT



PRESENTED BY LOCAL GOVERNMENT RISK MANAGEMENT SERVICES INC · A SERVICE ORGANIZATION OF
THE ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA AND THE GEORGIA MUNICIPAL ASSOCIATION RISK MANAGEMENT PROGRAMS

IN THIS ISSUE

In this issue of *Liability Beat*, we have included a new Motor Vehicle Search Policy developed by the Public Agency Training Council (PATC). This policy will also be posted on the LGRMS website. The rationale PATC has used for this new policy is detailed below. We ask you to look over the policy and make an informed decision on its use in your agency. This policy, as with other policies covering law enforcement critical tasks, is designed to assist your agency and your local government in minimizing potential liability for the tasks covered.

We are also featuring in this issue the schedule of free webinars that PATC is offering to GMA GIRMA and ACCG IRMA program members. Details on registering are in the announcement.

From the Director and Staff of the Public Agency Training Council:

Last week, the United States Supreme Court decided a case indicating that the placement of a GPS unit by law enforcement on a vehicle was a Fourth Amendment intrusion. They did not say that it was an unreasonable intrusion or that a warrant would be required, however they did indicate that the placement and obtaining data from the vehicle was within a protected interest. After much discussion amongst our staff we have determined that the safe harbor is to obtain a warrant before placing GPS on a vehicle or before obtaining data from a previously existing unit i.e. factory installed unit.

You may get some pushback from this change but it is the most practical action in light of the Court's decision. We added a provision indicating that if exigent circumstances exist, as with any other search, a warrant is not necessary. Note, that exigency has been automatically presumed when dealing with a vehicle by the United States Supreme Court and there has been a long standing rule that there is a diminished expectation of privacy in a vehicle. It may turn out that some future case indicates that there is no need for a warrant- if and when that happens we will update again but for the time being we have reached the conclusion that a warrant is the best practice.

LAW ENFORCEMENT WEBINARS

Local Government Risk Management Services is pleased to announce that the Public Agency Training Council (PATC) is offering a Law Enforcement Webinar Training Series free to the Georgia Municipal Association and Association County Commissioners of Georgia Liability and Property Members (GIRMA and IRMA). Follow the instructions below for any topics you are interested in.

You must register for each webinar separately.

Webinar Training Series by Jack Ryan

Free to GMA and ACCG GIRMA and IRMA (Liability Program Members)

How To Register:

1. Browse to following website:
<https://patc.webex.com/tc05051d/trainingcenter/meeting/joinUnlist.do?siteurl=patc>
2. Enter the session number for the webinar you wish to attend (see individual listings) and click "Join Now".
3. Click "Register" and complete the short registration form. You will be sent an email with instructions for joining the session at the appropriate time.

Webinar Schedule

Legal Update and Best Practices: Emergency Vehicle Operations and Pursuit

Friday, February 17, 2PM

Session Number: 731 649 743

Departments recognize their responsibility to apprehend criminals and lawbreakers, weighing this with their higher responsibility to protect and foster the safety of all persons in the operation of police vehicles under pursuit conditions.

The purpose of this training is to provide guidelines and directions for the establishment of responsibility for the safe operation of police vehicles during pursuit.

Officers should attempt to anticipate flight and utilize tactics to prevent a pursuit. If tactics to prevent a vehicle pursuit fail, tactics should be utilized to minimize the duration of the pursuit.

Legal Update and Best Practices: Arrest, Search and Seizure

Monday, April 2, 2PM

Session Number: 738 563 487

The mission of law enforcement is to protect and serve while preserving the constitutional rights of all citizens when stopping, arresting or searching individuals, while balancing the needs of law enforcement in solving crime for the protection of the community.

The provisions of the Constitution restrict the power of the government officials, including the police, over the people that government actors come into contact with. The amount of power a police officer can exercise over an individual is often controlled by the level of proof or the level of suspicion that the officer has regarding that individual.

The purpose of this training is to provide the attendee with legal updates and best practices for the critical tasks in law enforcement associated with arrest, search and seizure.

Legal Update and Best Practices: Care, Custody, Restraint & Prisoner Transport

Friday, May 4, 2PM

Session Number: 737 682 780

There is a clear-cut duty to protect prisoners who are in the custody of the agency, because persons who are involuntarily held cannot protect themselves. Transportation and restraint by law enforcement agencies of persons who are in custody is a constant requirement and a frequent activity.

Two general time periods are involved. The first is immediately after arrest when the arrestee is taken to the agency's holding facility of booking, processing and short-term holding. The second concerns the movement of prisoners from the holding facility to a hospital or other medical facility; to court; to attend a funeral or for other reasons. Regardless of the reason for the transportation of prisoners, potential hazards are always present.

An agency must establish uniform procedures that provide adequate safety and security of prisoners, transporting officers, and the public during prisoner transport.

The purpose of this training is to provide the attendee with legal updates and best practices for the critical tasks in law enforcement associated with care, custody, restraint and prisoner transport.

Legal Update and Best Practices: Officer-Involved Domestic Violence

Friday, June 1, 2PM

Session Number: 736 701 290

Police agency employees come from the community. They may become involved in domestic matters. Because their status is usually known to other persons in the community and they are representatives of the police agency, the agency must take positive steps to ensure that domestic matters involving officers do not adversely affect the employee's ability to perform, compromise the conduct of agency missions, or create moral, operational or efficiency problems for the agency.

The agency must be dedicated to providing assistance for the employee during these critical times so that the employee may resolve the situation and return to being a productive member of the agency without these types of personal and family concerns.

The purpose of this training is to provide the attendee with legal updates and best practices for agencies to manage officer-involved domestic misconduct and domestic violence policies and procedures.

Legal Update and Best Practices: Property and Evidence

Friday, June 15, 2PM

Session Number: 731 841 244

Departments must provide for the reasonable safekeeping of all property that comes into their possession, maintain a proper chain of custody and secure such items in a manner that will ensure that the evidence is available to be admitted at trial.

The purpose of this training is to provide the attendee with legal updates and best practices relative to forensically securing and preserving property and case evidence.

U.S. Supreme Court Legal Update for Law Enforcement Officers and Supervisors

Friday, July 20, 2PM EDT

Session Number: 730 304 414

The purpose of this training is provide the attendee with practical analysis of U.S. Supreme Court decisions affecting Law Enforcement operations from the session ending 2011-2012.

Off-Duty Firearms Carry Policy

Friday, August 17, 2PM EDT

Session Number: 730 692 847

A number of circumstances may impact your decision to get involved in any situation. First, you may be alone, with family members or other non-law enforcement personnel. Second, it is unlikely that you will have all of the necessary law enforcement service equipment while off-duty, for example; pepper spray, baton, handcuffs or radio. It must be recognized that the force continuum as well as threat assessment is changed due to this lack of equipment. You may be faced with multiple suspects or unaware of hidden suspects. There may also be environmental factors working against you such as: lack of cover, crowds of

civilians, darkness, etc. Your intervention may actually spark an escalation of violence.

The purpose of this training is to adopt safety directives and guidelines for dealing with the carrying of firearms while in an off-duty status and for dealing with an officer's duty and responsibility to take action in response to criminal activity while in an off-duty status.

Legal Update and Best Practices: Sexual Harassment, Discrimination and Misconduct

Friday, September 14, 2PM EDT

Session Number: 731 939 668

Agency's must have policies and procedures in place to prohibit Sexual Harassment, Sexual Discrimination or Sexual Misconduct in any form and to provide employees with a mechanism for reporting and resolving allegations of sexual harassment and discrimination.

When an officer abuses his or her authority for sexual purposes, and violates another person, the officer not only commits a crime against the victim, but damages the credibility and trust of the entire law enforcement community with the public.

The purpose of this training is to provide agencies with policy directives for managing and responding to cases involving the sexual harassment, sexual discrimination and/or sexual misconduct of its employees.

Legal Update and Best Practices: Hiring, Selection and Retention

Friday, October 19, 2PM EDT

Session Number: 736 912 939

It must be the mission of any law enforcement department to protect and serve the community by hiring and retaining highly qualified officers to respond to the ever growing needs of the community and to deliver professional and courteous service while enforcing the laws and ordinances within the jurisdiction.

The purpose of this training is to provide the attendee with legal updates and policy directives relative to the hiring, selection and retention of employees.

Legal Update and Best Practices: Special Operations

Friday, November 16, 2PM EDT

Session Number: 737 253 362

Law enforcement experience has demonstrated that there are police service demands which require specialized units that are equipped and trained to successfully handle these demands. SWAT (Special Weapons and Tactics Team) and similar units such as ERT (Emergency Response Teams) and SRT (Specialized Response Teams) are such units.

The mission of these highly trained and specially equipped units is to bring under control police incidents involving highly volatile situations including persons with weapons, barricaded and/or hostage incidents, suicidal calls, and high risk warrant service operations. These types of units are the most heavily armed within any police agency and demand deliberative decision-making and oversight.

The specialized equipment and training of these units provide for greater safety of the subjects being confronted, police employees directly involved, and the community. The police agency will use these specialized units only in situations warranting the need for the enhanced weaponry and training.

The purpose of this training is to provide the attendee with legal updates and best practices policy directives relative to special operations units.

Legal Update and Best Practices: Dealing with the Mentally Ill and Persons of Diminished Capacity

Friday, December 14, 2PM EDT

Session Number: 737 566 314

Every community can expect its law enforcement officers to encounter mentally ill subjects or persons of diminished capacities. This group of special needs persons presents field officers with different and often complex issues. These types of persons, whether from intoxication, suicidal potentials, medical complications or mental illness, present field officers with a wide range of behaviors usually different than those exhibited by other members of the community or persons involved in criminal activities.

Persons of diminished capacities may display conduct that is bizarre, irrational, unpredictable and threatening. They may not receive or comprehend commands or other forms of communication in the manner that the officer would expect. They often do not respond to authoritative persons or the display of force.

The ultimate mission of law enforcement when encountering a person of diminished capacity is to control the encounter and then determine the best course of action with respect to the subject person.

The purpose of this training is to provide the attendee with legal updates and best practices policy directives relative to the handling of mentally ill subjects or persons of diminished capacity.





Motor Vehicles Stops/Searches	Related Policies: Biased-Based Policing
<p><i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i></p>	
<p>Applicable State Statutes: O.C.G.A. §17-5-1</p>	
<p>CALEA Standard: 1.2.4</p>	
<p>Georgia Law Enforcement Certification: 4.1</p>	

- I. **Purpose:** The purpose of this policy is to direct officers in their contacts with motor vehicles.
- II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when conducting vehicle stops and searches while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions:**
 - A. **Motor Vehicle:** Any motorized vehicle that is capable of movement to include motor homes.
 - B. **Probable Cause:** (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
 - C. **Probable Cause:** (arrest): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.
 - D. **Reasonable Suspicion** (temporarily detain): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.

- E. **Reasonable Suspicion (frisk):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.
- F. **Frisk (weapon):** A limited type of search, the limit being to those areas capable of holding a weapon and located within the subject's immediate area of control.
- G. **GPS (Global Positioning System)** As used on this policy such device would include any mechanism either built-into or attached to the vehicle which allows a member of this agency to obtain data relating to the vehicle's location.

IV. Procedures:

- A. **Vehicle Stops-** Vehicles may be lawfully stopped under the following circumstances:
 - a. **Reasonable Suspicion Based Stop-**where an officer has articulated facts that support a belief that criminal activity is occurring and that a vehicle is involved the officer may stop the vehicle to investigate further. The stop may continue as long as the officer diligently investigates to confirm or dispel his or her suspicion that criminal activity is occurring and the occupant(s) of the vehicle are involved.
 - b. **Probable Cause based Stopped-Traffic Violation-**where an officer has probable cause to believe that a violation of the motor vehicle code has occurred may stop the vehicle and detain the vehicle for a reasonable amount of time while the citation is completed. If the violation is an arrestable offense-refer to section a. iii. Below.
 - c. **Probable Based Stop-Arrest/Search-**where an officer has probable cause to believe that a person in a vehicle has committed a crime or probable cause to believe that a vehicle contains evidence of a crime or contraband, the officer may stop the vehicle to arrest the occupant (in the arrest situation) or stop the motor vehicle to search the vehicle in the search scenario.
 - d. **Consensual Contact-**An officer may approach any stopped vehicle (a vehicle which is stopped by the operator's own volition prior to police contact) and attempt to speak to person(s) in the vehicle. The officer has no power to force compliance with his or her attempt to contact in the consent situation.
- B. **Ordering Persons From a Vehicle:** An officer may order any occupant of a lawfully stopped vehicle to exit the vehicle during a lawful stop.
- C. **Frisk of a Vehicle:** An officer who has reasonable suspicion to believe that a lawfully stopped vehicle contains a weapon may search the vehicle subject to the following limitations:
 - a. The search is limited to subject's immediate area of control which would be the passenger compartment of the vehicle.
 - b. The search is limited to those areas in the passenger compartment capable of holding a weapon.
- D. **Search Incident to Arrest (Vehicle):** Following the lawful arrest of a subject from a vehicle or who had exited the vehicle just prior to arrest, officers may search the vehicle incident to arrest subject to the following limitations:
 - a. The arrest must be lawful and must be a full-custodial arrest.
 - b. The search must take place at the time of the arrest.

- c. A search incident to arrest may not take place once the arrestee is secured in handcuffs and secured in a law enforcement vehicle unless the officer has reasonable grounds to believe that the vehicle contains evidence of the particular crime for which the subject was arrested.
 - d. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only) but is a thorough search.
 - e. Unlocked containers within the vehicle may be searched irrespective of who the containers belong to.
 - f. The person or other occupants may not be frisked or searched simply because another person in the vehicle has been arrested.
- E. Consent Search of Vehicle:** An officer may ask the person in control of any lawfully stopped vehicle or a vehicle that is not moving at the time of a consensual contact for consent to search the vehicle. Consent searches are subject to the following limitations:
- a. The Consent must be voluntary
 - b. Written consent is not required under federal law; however written authorization or a mobile video recording that documents consent will assist in proving the voluntary nature of the consent.
 - c. The scope of the search is within the control of the person granting consent, thus, the consenting party can direct the area which an officer is allowed to search as well as how long the search may last.
 - d. Under the rules of consent there is no requirement that officers inform a person of their right to refuse the officer's request, however a person who is told of their ability to refuse will be less likely to make out a claim that their consent was not voluntary.
- F. Probable Cause Searches of Vehicles (Carroll Doctrine/Motor Vehicle Exception to the Warrant Requirement/Mobile Conveyance Exception)** An officer may, without a warrant, search a motor vehicle when the officer can articulate probable cause to believe that the vehicle contains evidence of a crime or contraband subject to the following limitations:
- a. In cases where the vehicle was stopped or parked prior to contact by the police, the area where the vehicle is parked is not private property such that officers would have to obtain a warrant to gain access to the property itself.
 - b. The vehicle is capable of movement. This does not mean that the vehicle is occupied; it simply means that the vehicle could be started and driven off with the turn of a key.
 - c. Officers may search the entire vehicle unless the information known to the officer indicates that the evidence or contraband is located in a specific place within the vehicle in which case the scope of an officer's search would be limited to the specified area.
 - d. Officers may only search those areas within the vehicle capable of containing the item being sought. For example, an officer looking for stolen stereo equipment would exceed the scope of a probable cause search if he or she were to search the ashtray for the stolen equipment.

- G. Drug Sniffing Canine:** Where officers have a lawfully stopped vehicle, they may utilize a drug-detection canine to sniff the exterior of the vehicle as long as the sniff occurs within the duration from a time standpoint of the purpose that justified the stop to begin with. For example, if the vehicle was stopped for speeding, the canine would have to arrive and conduct the sniff in the time it would take to write the citation.
- a. If the stop must be prolonged beyond its justification to wait for the canine to arrive, the vehicle must be released and the canine cancelled.
 - b. If the canine conducts a sniff in accordance with this policy and alerts on the vehicle, the officer has probable cause and may conduct a probable cause search of the vehicle.
 - c. Putting a canine inside a vehicle is a search for 4th Amendment purposes and must not be done unless the officer can support the search by probable cause to believe the vehicle contains contraband.
- H. Use of GPS:** Prior to installing GPS or obtaining data from a factory installed GPS system to obtain data related to a citizen's vehicle location, a search warrant shall be obtained for the installation and/or retrieval of data unless there are articulable exigent circumstances which would justify the immediate installation or retrieval of data i.e. kidnapping suspect vehicle.
- I. Inventory Searches:** An inventory search is not a search for evidence or contraband and is not a search with an investigative purpose. The primary objective of these searches is to protect the property of persons whose vehicles are towed at the direction of law enforcement. These searches also have the objective of protecting law enforcement from false claims with respect to vehicles that are towed at the direction of law enforcement. Inventory searches are subject to the following limitations.
- a. All vehicles towed at the direction of an officer of this agency, irrespective of the reason for the tow, shall be inventoried in accordance with this policy.
 - b. Officers will note in their report any items of value that are within the vehicle.
 - c. All compartments in the vehicle which the officer has access to, including those areas which the officer can open with a key or by activating a lock to the unlock position, without causing damage shall be searched. This includes, the trunk, glove compartment or containers of any type that are present within the vehicle at the time of the tow.
 - d. If an item of extreme value is located within the vehicle and is removable, the officer shall take the item for safekeeping and either turn the item over to the owner or, when that is not possible, take the item to the department to be held for safekeeping in accordance with the provisions of the property and evidence policy.
- J. Community Caretaking Search:** Where officers have reason to suspect that a vehicle contains a dangerous item, which, if left unattended will endanger public safety, the officer may search the vehicle to remove the dangerous item for safekeeping. An officer removing such an item should protect the owner's property interest by ensuring that the item is stored in accordance with department procedures relating to property and evidence.



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This Month:

MOTOR VEHICLE SEARCHES AND GPS • PATC WEBINARS

